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MARINE TERMINAL LEASE AND OPERATING AGREEMENT

BETWEEN

BROWARD COUNTY

AND

FLORIDA INTERNATIONAL TERMINAL, LLC

201230



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MARINE TERMINAL LEASE AND OPERATING AGREEMENT

This Marine Terminal Lease and Operating Agreement ("Agreement") made and entered into by and between:

BROWARD COUNTY,
a political subdivision of the state of Florida,
acting by and through its Board of County Commissioners,
(hereinafter called the "COUNTY"),

and

FLORIDA INTERNATIONAL TERMINAL, LLC
a Florida limited liability company,
(hereinafter called the "TERMINAL OPERATOR"),

WITNESSETH:

WHEREAS, COUNTY owns and has jurisdiction over the development, operation, and maintenance of Port Everglades in Broward County, Florida; and

WHEREAS, TERMINAL OPERATOR is qualified and experienced to operate a modern marine container terminal and desires to lease and operate a container terminal at Southport, Port Everglades; and

WHEREAS, COUNTY and TERMINAL OPERATOR desire to enter into this Agreement with respect to the real property and improvements hereinafter described,

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, and for other good and valuable consideration, and the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. **CURRENT PREMISES, INTERIM PREMISES, AND FINAL PREMISES**

A. **CURRENT PREMISES**

Effective as of the Commencement Date defined in Section 2 herein, COUNTY does hereby demise and lease to TERMINAL OPERATOR and TERMINAL OPERATOR does hereby lease and take from COUNTY pursuant to the terms and conditions provided herein, that certain real property comprised of ± 36.03 acres of land together with all appurtenances, rights, privileges, and hereditaments thereto, and all improvements thereon, located at Port Everglades, Broward County, Florida as more particularly described on Exhibit "A" attached hereto and made a part hereof, hereinafter referred to as the ("Current Premises").

B. **INTERIM PREMISES**

Effective January 1, 2017, or such earlier effective date (if TERMINAL OPERATOR gate complex is completed) provided in writing to TERMINAL OPERATOR by COUNTY's Port Everglades Chief Executive/Port Director, ("Interim Premises Effective Date") TERMINAL OPERATOR shall quit and remove itself and relocate its operations from the Current Premises described on Exhibit "A" and lease and take from COUNTY and commence its operations pursuant to the terms and conditions provided herein, that certain real property comprised of ± 32.1 acres of land together with all appurtenances, rights, privileges, and hereditaments thereto, and all improvements thereon, located at Port Everglades, Broward County, Florida as more particularly described on Exhibit "B" attached hereto and made a part hereof, hereinafter referred to as the ("Interim Premises"). Prior to the Interim Premises Effective Date, COUNTY shall provide TERMINAL OPERATOR with

an as-built survey of the Interim Premises. COUNTY shall demise the Interim Premises to TERMINAL OPERATOR free of tenancies, perimeter fenced and asphalt in good state of repair. COUNTY shall provide for a curb cut access on McIntosh Road by an access point to the Interim Premises to be constructed by COUNTY. If an earlier effective date is provided to TERMINAL OPERATOR as set forth hereinabove, TERMINAL OPERATOR shall take occupancy of the Interim Premises within ninety (90) calendar days from the date of the written notice sent by COUNTY's Chief Executive/Port Director.

C. FINAL PREMISES

Effective December 31, 2019, (COUNTY's intended "substantial completion date" for the construction of ± 25 acres of land as a container yard and related marine infrastructure known as the Port Everglades Southport Turning Notch Construction Project ("STNCP")), or such earlier effective date (provided the gate complex is completed by TERMINAL OPERATOR) provided in writing to TERMINAL OPERATOR by COUNTY's Chief Executive/Port Director ("Final Premises Effective Date"), TERMINAL OPERATOR shall lease and take from COUNTY pursuant to the terms and conditions provided herein, that certain real property comprised of ± 46.6 acres of land (inclusive of the Interim Premises) together with all appurtenances, rights, privileges, and hereditaments thereto, and all improvements thereon, located at Port Everglades, Broward County, Florida as more particularly described on Exhibit "C" attached hereto and made a part hereof, hereinafter referred to as the ("Final Premises"). Prior to the Final Premises Effective Date COUNTY shall provide TERMINAL OPERATOR with an as-built survey of the Final Premises. COUNTY shall demise the Final Premises to TERMINAL OPERATOR free of

tenancies, perimeter fenced and asphalt in good state of repair. COUNTY shall provide for a curb cut on McIntosh Road or an access point to the Final Premises. COUNTY shall remove the existing fuel tank and remediate the property if necessary. If an earlier effective date is provided to TERMINAL OPERATOR as set forth hereinabove, TERMINAL OPERATOR shall take occupancy of the Final Premises within ninety (90) calendar days from the date of the written notice sent by COUNTY's Chief Executive/Port Director. In no event, shall TERMINAL OPERATOR be required to take occupancy of the Final Premises until COUNTY has demolished the existing building located thereon. It is the expressed intent of COUNTY, that the "STNCP" be prosecuted so as to keep Berth 30 operational for TERMINAL OPERATOR's intended uses.

D. CONDITION OF CURRENT PREMISES, INTERIM PREMISES, AND FINAL PREMISES

COUNTY makes no representations or warranties whatsoever as to: (i) the condition of the Current Premises, Interim Premises, and Final Premises described on Exhibits "A," "B," and "C" respectively, or (ii) whether the Current Premises, Interim Premises, and Final Premises comply with applicable federal, state, and local laws, ordinances, rules, or regulations. The Current Premises is hereby demised in "**AS IS CONDITION**" and "**WITH ALL FAULTS**," subject to the existing findings contained in the environmental baseline audit previously performed on the Current Premises attached hereto as Exhibit "D." The Interim Premises and Final Premises shall be demised in "**AS IS CONDITION**" and "**WITH ALL FAULTS**," except as provided in paragraphs B and C hereinabove, subject to the future findings contained in the environmental baseline audits to be conducted by COUNTY on both the Interim Premises, and Final Premises as provided herein. Not less

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than ninety (90) calendar days prior to the dates specified herein when TERMINAL OPERATOR is to take possession and lease the Interim Premises and Final Premises, COUNTY shall complete an environmental baseline audit for each parcel of land. The completed environmental baseline audit for the Interim Premises and the completed environmental baseline audit for the Final Premises shall be incorporated into and made a part of this Agreement as Composite Exhibit "E" by reference hereof. COUNTY shall remediate (at its sole cost) if necessary, any environmental contamination located on the Interim Premises and Final Premises prior to TERMINAL OPERATOR's occupancy of same. TERMINAL OPERATOR hereby releases COUNTY from any and all claims, demands, causes of action, damages, fees, costs and liabilities on account of the condition of the Current Premises, Interim Premises, and Final Premises, and any failure of any of the component parts of the Current Premises, Interim Premises, and Final Premises to be in good and working order, except as provided herein.

2. **TERM; COMMENCEMENT DATE AND OPTIONS TO EXTEND TERM**

The term of this Agreement shall begin on the Commencement Date hereof and run for an initial period of ten (10) years ("Initial Term"), subject to each of the Parties' rights of termination as provided herein.

"Commencement Date," as used in this Agreement, is hereby deemed by the Parties hereto to be July 1, 2015. TERMINAL OPERATOR shall have the option to extend the Initial Term of this Agreement for two (2) additional five (5) year periods each an ("Option Term"), provided it has kept and remains in compliance with all the terms and conditions of this Agreement. TERMINAL OPERATOR shall give COUNTY's Port

Everglades Department's Chief Executive/Port Director written notice of its intent to exercise its option to extend the Initial Term of this Agreement not less than twelve (12) months prior to the expiration date of the Initial Term and if applicable, the expiration date of the first five (5) year Option Term ("Option Notice"). Unless COUNTY, through its Board of County Commissioners, waives the required Option Notice, failure of TERMINAL OPERATOR to comply with the Option Notice requirement shall result in the forfeiture by TERMINAL OPERATOR of its option to extend the Initial Term or then existing Option Term of this Agreement as applicable.

3. **FILING WITH FEDERAL MARITIME COMMISSION**

Once fully executed by the Parties hereto, COUNTY shall file this Agreement with the Federal Maritime Commission.

4. **RENTAL, FEES, AND CHARGES**

A. **RENTAL PAYMENTS FOR CURRENT PREMISES**

1) Effective July 1, 2015, the annual rental for the Current Premises, subject to adjustments as hereinafter provided, shall be paid by TERMINAL OPERATOR to COUNTY in twelve (12) equal monthly installments, together with all applicable sales taxes thereon, in advance and without demand, setoff or deduction. Monthly installments of rent shall be payable by TERMINAL OPERATOR to COUNTY in advance, on the first (1st) day of each and every month.

(a) Effective on the Commencement Date hereof, TERMINAL OPERATOR's total annual rental is Eight Hundred Seventeen Thousand Two Hundred Fifteen Dollars and Thirty-two Cents (\$817,215.32) for the Current

Premises to be paid in twelve (12) equal monthly rent installments of Sixty-eight Thousand One Hundred One Dollars and Twenty-seven Cents (\$68,101.27).

(b) COUNTY and TERMINAL OPERATOR agree, that over the period of time TERMINAL OPERATOR leases the Current Premises, the total annual rental amount for the Current Premises established in subparagraph (a) hereinabove, shall be adjusted on each and every January 1st ("Adjustment Date"), and such adjusted rental (together with applicable sales taxes thereon) shall be the new annual rental for the Current Premises.

(c) On each "Adjustment Date," for the Current Premises, the total annual rental shall be increased to an amount equal to the greater of either: (i) the product of the annual rental paid during the immediately preceding twelve (12) month period, multiplied by the "CPI Multiplier" (as hereinafter defined); or (ii) the product of the annual rental paid during the immediately preceding twelve (12) month period, multiplied by 1.03. The product of such multiplication shall be the amount of the annual rental payment to be made during the next succeeding twelve (12) month period. Upon determining such rental adjustment, COUNTY shall advise TERMINAL OPERATOR of the revised total annual rental amount and the corresponding adjusted monthly installment payment of rent. In no event, shall any adjusted annual rental established pursuant to this subparagraph (c) be less than the total annual rental paid during the immediately preceding twelve (12) month period.

(i) The "CPI Multiplier" is a fraction, the numerator of which shall be the "CPI Index Number" (as hereinafter defined) indicated for the month that is three (3) months prior to the Adjustment Date and the denominator of which shall be the CPI Index Number indicated for the month that is fifteen (15) months prior to the Adjustment Date.

(ii) The "CPI Index Number" is the index number of retail commodity prices designated "CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS -UNITED STATES CITY AVERAGE - ALL ITEMS" (1982-1984 =100) ("Consumer Price Index") issued by the Bureau of Labor Statistics, United States Department of Labor. The rental and the adjustment made based upon the provisions of this section shall be made solely by COUNTY. Any publication by either the United States Department of Labor or the United States Department of Commerce in which such Index numbers are published shall be admissible in evidence in any legal or judicial proceeding involving this Agreement without further proof of authenticity or authentication. Should the Bureau of Labor Statistics cease publishing the above-described Index, then such other Index as may be published by the United States Department of Labor that most nearly approximates the discontinued Index shall be used in making the adjustments described above. Should the United States Department of Labor discontinue publication of an Index approximating the Index contemplated, then such Index as may be published by another United States governmental agency,

which most nearly approximates the Index first above referenced shall govern and be substituted as the Index to be used.

B. RENTAL PAYMENTS FOR INTERIM PREMISES

Effective on the "Interim Premises Effective Date", the then current per acre rental rate payable by TERMINAL OPERATOR to COUNTY for the Current Premises, shall be the per acre rental rate used to calculate the total monthly rental charges for the Interim Premises, which together with applicable sales taxes thereon is due and payable by TERMINAL OPERATOR to COUNTY for each twelve (12) month period that TERMINAL OPERATOR occupies and leases the Interim Premises. The monthly rental amount for the Interim Premises shall be billed by COUNTY and paid by TERMINAL OPERATOR, in advance, on the first (1st) day of each and every month. Notwithstanding the foregoing, COUNTY shall not charge TERMINAL OPERATOR any rent for the Interim Premises for the first four (4) weeks from the Interim Premises Effective Date.

C. RENTAL PAYMENTS FOR FINAL PREMISES

1) Effective as of the "Final Premises Effective Date", the total starting annual rental amount (together with applicable sales taxes thereon) payable by TERMINAL OPERATOR to COUNTY for the Final Premises, shall be determined as follows:

(a) The starting total annual rental amount shall be an amount equal to the market rent of the Final Premises as defined hereinbelow. The starting total annual rental amount for the Final Premises shall be effective on the Final Premises Effective Date. The market rent of the Final Premises shall be established as follows:

(b) The market rent for the Final Premises shall be equal to the product of the "Land and Improvements MR" and Rental Percentage Adjustment Factor (as hereinafter defined). The "Land and Improvements MR" shall be determined by an appraisal based upon the market value of the TERMINAL OPERATOR's rights of use of the Final Premises together with the market value of the improvements thereon, as encumbered by this Agreement. The existing office building which will be demolished by COUNTY, shall not be factored into any written appraisal. The Parties hereto acknowledge and agree, that the unamortized value of the TERMINAL OPERATOR improvements to the Final Premises (as of the date the "all in" bundled rate is negotiated), will be deducted from the appraised value of the Land and Improvements MR for the purpose of determining the land rent component to be used in negotiating the "all in" bundled rate.

(c) The "Rental Percentage Adjustment Factor" shall be the percentage factor being utilized by COUNTY, to establish rental rates at Port Everglades (in its sole discretion) at the time of the rental adjustment.

(d) The written appraisal report for the Final Premises shall be completed by COUNTY and provided to TERMINAL OPERATOR not less than two hundred seventy (270) calendar days before December 31, 2019, or the earlier effective date as provided in Article 1, subsection C herein. The appraisal report will follow the narrative format suggested by the American Institute, the content of which will conform to the Uniform Standards of Professional Appraisal Practice and will identify any comparable properties with specificity. COUNTY's Port Everglades

Department shall send TERMINAL OPERATOR written notice of the starting total annual rental amount for the Final Premises, with the final written appraisal report. If TERMINAL OPERATOR is not in agreement with the starting total annual rental amount for the Final Premises as set forth in said notice, then TERMINAL OPERATOR may, at its sole cost and expense, hire its own review appraiser to appraise the Final Premises using the same "Land and Improvements MR" methodology as used by COUNTY as provided hereinabove. TERMINAL OPERATOR's review appraisal must be completed within sixty (60) calendar days following TERMINAL OPERATOR's receipt of COUNTY's final written appraisal report. TERMINAL OPERATOR shall provide COUNTY's Port Everglades Department with a copy of the review appraisal report upon its completion. If TERMINAL OPERATOR fails to provide a completed review appraisal report within the sixty (60) calendar day period, then TERMINAL OPERATOR shall thereafter have no further rights to dispute the starting total annual rental amount for the Final Premises as set forth in COUNTY's Port Everglades Department's written notification. If TERMINAL OPERATOR does provide a completed review appraisal within the (60) calendar day period, and if such review appraisal does not agree with COUNTY's Port Everglades Department's appraisal, then the appraiser selected by COUNTY and the appraiser selected by TERMINAL OPERATOR shall together select and engage a third appraiser ("Dispute Resolution Appraiser") within seven (7) calendar days following the date COUNTY's Port Everglades Department receives TERMINAL OPERATOR's review appraisal. The costs and expenses of

the Dispute Resolution Appraiser shall be bore equally between COUNTY and TERMINAL OPERATOR. The Dispute Resolution Appraiser shall use the same "Land and Improvements MR" methodology, as set forth hereinabove. The Dispute Resolution Appraiser must complete its appraisal ("Dispute Resolution Appraisal") within fourteen (14) calendar days of its engagement date, and provide copies of the Dispute Resolution Appraisal to both COUNTY's Port Everglades Department and TERMINAL OPERATOR. The "Land and Improvements MR," as determined by the Dispute Resolution Appraiser, shall be binding on both Parties hereto and be the value multiplied by the COUNTY's Rental Percentage Adjustment Factor to determine the starting total annual rental amount for the Final Premises.

(e) All appraisers engaged to prepare appraisals as provided herein, must have a M.A.I. designation or be a state of Florida Certified General Appraiser (or a member of a professional group of similar stature, that has been approved by COUNTY's Port Everglades Department), having an office in Palm Beach, Broward, or Miami-Dade County and be experienced in the appraisal of similar properties.

(f) COUNTY and TERMINAL OPERATOR agree that the starting total annual rental amount established (together with applicable sales taxes thereon) for the Final Premises established hereinabove, shall be adjusted on the first anniversary of the Final Premises Commencement Date and each and every subsequent annual anniversary date thereafter over the Initial Term and each Option Term hereof (each such date being referred to as an "Adjustment Date") as set forth below, and such adjusted rental (together with applicable sales taxes

thereon) shall be the new annual rental for the Final Premises, and shall be payable in twelve equal monthly installments in advance and without demand, setoff or deduction.

On each "Adjustment Date" the annual rental for the Final Premises shall be increased to an amount equal to the greater of either: (i) the product of the annual rental paid during the immediately preceding twelve (12) month period, multiplied by "CPI Multiplier" (as hereinafter defined); or (ii) the product of the annual rental paid during the immediately preceding twelve (12) month period, multiplied by 1.03. The product of such multiplication shall be the amount of the annual rental payment to be made during the next succeeding twelve (12) month period, commencing January 1. Upon determining such rental adjustment, COUNTY shall advise TERMINAL OPERATOR of the new annual rental amount and the corresponding adjusted monthly installment payment of rent. In no event shall any adjusted annual rental established pursuant to this subparagraph be less than the total annual rental paid during the immediately preceding twelve (12) month period.

(i) The "CPI Multiplier" is a fraction, the numerator of which shall be the "CPI Index Number" (as hereinafter defined) indicated for the month that is three (3) months prior to the Adjustment Date and the denominator of which shall be the CPI Index Number indicated for the month that is fifteen (15) months prior to the Adjustment Date.

(ii) The "CPI Index Number" is the index number of retail commodity prices designated "CONSUMER PRICE INDEX FOR ALL

URBAN CONSUMERS - UNITED STATES CITY AVERAGE - ALL ITEMS" (1982-1984 =100) ("Consumer Price Index") issued by the Bureau of Labor Statistics, United States Department of Labor. The rental and the adjustment made based upon the provisions of this section shall be made solely by COUNTY. Any publication by either the United States Department of Labor or the United States Department of Commerce in which such Index numbers are published shall be admissible in evidence in any legal or judicial proceeding involving this Agreement without further proof of authenticity or authentication. Should the Bureau of Labor Statistics cease publishing the above-described Index, then such other Index as may be published by the United States Department of Labor that most nearly approximates the discontinued Index shall be used in making the adjustments described above. Should the United States Department of Labor discontinue publication of an Index approximating the Index contemplated, then such Index as may be published by another United States governmental agency, which most nearly approximates the Index first above referenced shall govern and be substituted as the Index to be used.

5. **CASH SECURITY DEPOSIT, PAYMENT BOND, AND DRAWDOWN BY COUNTY**

A. **CASH DEPOSIT**

COUNTY acknowledges receipt of the sum of Fifty Thousand Dollars (\$50,000.00) from TERMINAL OPERATOR as a cash security deposit.

B. PAYMENT BOND

In addition to the cash security deposit provided in Section 5.A. hereinabove, TERMINAL OPERATOR shall provide COUNTY, on or before the execution of this Agreement, with a payment bond or irrevocable letter of credit in a form approved by COUNTY's Port Everglades Department's Chief Executive/Port Director in the amount of Four Hundred Fifty Thousand Dollars (\$450,000.00) guaranteeing to COUNTY the payment of all of TERMINAL OPERATOR's monetary obligations as provided hereunder. Such bond or irrevocable letter of credit shall be placed with a surety company or financial institution of recognized standing, authorized to transact business in the state of Florida as a surety, having a resident agent in the state of Florida and having been in business with a record of successful continuous operation for at least five (5) years ("Surety").

The Surety shall hold a current certificate of authority as acceptable Surety on federal bonds in accordance with United States Department of Treasury Circular 570, Current Revisions. If the amount of the bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the Surety shall not exceed the underwriting limitation in the circular, and the excess risks must be protected by coinsurance, reinsurance, or other methods in accordance with Treasury Circular 297, revised September 1, 1978 (31 CFR Section 223.10 Section 223.111), as amended. Further, the Surety shall provide COUNTY with evidence satisfactory to COUNTY, that such excess risk has been protected in an acceptable manner.

The Surety shall have at least a B+ minimum rating in the latest revision of Best's Insurance Report.

C. INCREASE IN AMOUNT OF CASH SECURITY DEPOSIT FOR DEFAULT

In the event that TERMINAL OPERATOR is in default under this Agreement more than two (2) times within any twelve (12) month period, irrespective of whether or not such default is cured, then, without limiting COUNTY's other rights and remedies provided for in this Agreement or at law or equity, COUNTY shall have the right to increase the cash security deposit requirement to three (3) times the original cash security deposit amount. TERMINAL OPERATOR's requirement to increase the cash security deposit shall be effective upon the date of COUNTY's third notice of default and TERMINAL OPERATOR shall increase the amount of its cash security deposit to COUNTY within thirty (30) calendar days of the date of the third notice of default.

D. DRAW DOWN OF CASH SECURITY DEPOSIT AND PAYMENT BOND

COUNTY shall have the right to use the cash security deposit and payment bond or irrevocable letter of credit as guarantee of TERMINAL OPERATOR's performance of its monetary obligations under the terms and conditions of this Agreement, and same shall be used to reimburse COUNTY for any and all costs and expenses, which COUNTY elects, in its sole discretion, to pay on TERMINAL OPERATOR's behalf in the event TERMINAL OPERATOR fails to perform its monetary obligations under the terms and conditions of this Agreement. All or any part of the cash security deposit and payment bond or irrevocable letter of credit applied by COUNTY under this Section, shall be repaid by TERMINAL OPERATOR within fifteen (15) calendar days after written demand therefor is sent, so that the cash security deposit and payment bond or irrevocable letter of credit are maintained at their respective required amounts as provided in this Agreement. All amounts not paid

within said time frame shall accrue interest and late charges in accordance with Section 6 hereof. Failure by TERMINAL OPERATOR to replenish the cash security deposit and payment bond or irrevocable letter of credit by the amount(s) applied by COUNTY under this subsection, shall constitute a Triggering Event hereunder.

E. NO INTEREST PAID BY COUNTY

It is understood that no interest shall be paid on the cash security deposit, but that if TERMINAL OPERATOR has not defaulted hereunder, then COUNTY shall return all amounts then held as the cash security deposit to TERMINAL OPERATOR within thirty (30) calendar days after the expiration or termination of this Agreement.

6. INTEREST AND LATE CHARGES

If TERMINAL OPERATOR fails to make a payment(s), which TERMINAL OPERATOR is obligated to make, as provided herein within fifteen (15) calendar days of the due date, TERMINAL OPERATOR shall pay to COUNTY, in addition to the amount otherwise due, a late charge equal to ten percent (10%) of such overdue amount. Interest shall accrue on all delinquent amounts and other amounts as is provided for in COUNTY's rules, regulations and ordinances, including Port Everglades Tariff No. 12, amendments thereto and reissues thereof, provided such assessments shall be applied uniformly to all Port Everglades tenants similarly situated.

TERMINAL OPERATOR and COUNTY agree that the late charge set forth herein represents a reasonable estimate of such costs and expenses and is fair compensation to COUNTY for the loss suffered from such nonpayment by TERMINAL OPERATOR. No acceptance by COUNTY of fees, charges or other payments in whole or in part for any

period or periods after a default by TERMINAL OPERATOR of any of the terms, covenants and conditions hereof shall be deemed a waiver of any right on the part of COUNTY to terminate this Agreement. Any and all amounts due and payable under this Section shall be payable to COUNTY within thirty (30) calendar days of their due date.

7. PLACE OF PAYMENTS

All payments required to be made by TERMINAL OPERATOR under this Agreement shall be made payable to: BROWARD COUNTY BOARD OF COUNTY COMMISSIONERS, and shall be delivered to: Port Everglades, Attn: Finance Division, 1850 Eller Drive, Fort Lauderdale, FL 33316, or to such other office or address as may be substituted therefor.

8. TAXES

A. Nothing herein shall prevent TERMINAL OPERATOR from challenging any assessment or any tax to the same extent and in the same manner as may any other property owner or resident of Broward County.

Throughout the Initial Term and each Option Term as applicable, TERMINAL OPERATOR agrees to pay as required herein, all taxes levied and assessed upon the Current Premises, Interim Premises, and Final Premises including all improvements thereon, together with all special assessments of any kind levied and assessed against the Current Premises, Interim Premises, and Final Premises and improvements thereon, together with sales tax. Further, TERMINAL OPERATOR agrees to pay when due and before the same becomes delinquent, all personal property taxes, which may be levied and assessed against all tangible personal property situated on the Current Premises, Interim

Premises, and Final Premises and subject to taxation, or against TERMINAL OPERATOR's intangible personal property subject to taxation in Broward County, Florida. Additionally, TERMINAL OPERATOR agrees to pay all sales or use taxes, which might hereafter be lawfully assessed or imposed arising out of its operations at Port Everglades. Notwithstanding any provision of this Agreement to the contrary, NO obligation, which accrued but has not been satisfied under any prior agreements between the Parties, shall terminate or be considered canceled upon the execution of this Agreement. Rather, such obligation shall continue as if it had accrued under this Agreement until the obligation is satisfied.

B. In addition, TERMINAL OPERATOR agrees to pay, as compensation, to COUNTY at least thirty (30) calendar days prior to expiration of this Agreement, or immediately upon termination of this Agreement, a pro rata amount of the tax obligation, together with sales tax, for the calendar year in which such expiration or termination occurs ("Exit Year"), provided that the tax obligation for such year has not been paid in accordance with the foregoing paragraph. In the event the actual tax obligation for the Exit Year has not yet been determined, then the amount due to COUNTY shall be estimated based on the tax obligation levied and assessed against the Current Premises, Interim Premises, and Final Premises and improvements thereon for the prior calendar year. Thereafter, if the estimated amount paid by TERMINAL OPERATOR based on the prior year's obligation is less than the actual tax obligation for the Exit Year, then TERMINAL OPERATOR shall pay the shortfall to COUNTY within fifteen (15) calendar days after written demand therefor is made. If the estimated amount paid by TERMINAL

OPERATOR based on the prior year's obligation is greater than the actual tax obligation for the Exit Year than that paid by TERMINAL OPERATOR as required in this Section, then COUNTY shall refund such amount to TERMINAL OPERATOR within sixty (60) calendar days.

C. The provisions of this Section shall survive the termination or expiration of this Agreement.

9. USE; COMPLIANCE WITH LAWS; FAILURE TO COMPLY

A. USE

The Current Premises, Interim Premises, and Final Premises as specifically described herein, shall be used solely as a modern container terminal yard facility with related storage and office space uses and for ancillary or related uses, and for no other use or purpose, without the prior written consent of COUNTY's Port Everglades Department by its duly authorized representative (the "Chief Executive/Port Director").

Under no circumstances, shall TERMINAL OPERATOR allow or permit others to use any portion of the Current Premises, Interim Premises, and Final Premises in competition with any business conducted by COUNTY.

TERMINAL OPERATOR shall conduct its operations in an orderly and commercially reasonable manner considering the nature of its operations. TERMINAL OPERATOR shall not unreasonably annoy, disturb (whether via vibrations, noise or otherwise), endanger or be offensive to others at Port Everglades. TERMINAL OPERATOR shall commit no waste or injury on or about the Current Premises, Interim Premises, and Final Premises and shall not do or permit to be done anything, which may result in the creation, commission or

maintenance of such waste or injury to same. TERMINAL OPERATOR shall use and maintain the Current Premises, Interim Premises, and Final Premises in such manner so as to avoid the creation of any nuisance from obnoxious odors, smoke, noxious gases, vapors, dust, noise or otherwise. TERMINAL OPERATOR shall not keep or store any explosives on the Current Premises, Interim Premises, and Final Premises.

It is understood that TERMINAL OPERATOR will not conduct any welding or burning activities until it has obtained all required permits from COUNTY, City of Hollywood, Florida, and the U.S. Coast Guard. COUNTY agrees that it will not unreasonably withhold issuance of any welding or burning permits, which it issues.

TERMINAL OPERATOR shall maintain a five-foot clear zone from the perimeter fencing on the Current Premises, Interim Premises, and Final Premises at all times.

B. COMPLIANCE WITH LAWS

TERMINAL OPERATOR, in its use, occupation, alteration and construction of the Current Premises, Interim Premises, and Final Premises and in the use of property or facilities and services at Port Everglades, shall, at its sole expense, comply with and be governed by all laws, ordinances, rules, regulations and directives of the federal, state, county, and municipal governmental units or agencies having jurisdiction over the Current Premises, Interim Premises, and Final Premises and the business being conducted thereon, including, compliance with Section 255.20, Florida Statutes by competitively awarding its construction work on the Current Premises, Interim Premises, and Final Premises, the Americans with Disabilities Act of 1990 ("ADA") and COUNTY's published Tariff No. 12, amendments thereto and reissues thereof. Within fifteen (15) calendar days

after receipt by either Party hereto of a notice of use or compliance violation, or of a regulatory investigation or enforcement action relating to TERMINAL OPERATOR's use of the Current Premises, Interim Premises, or Final Premises, the receiving Party shall advise the nonreceiving Party in writing and provide copies of such notices.

C. USE OR COMPLIANCE VIOLATION

Should TERMINAL OPERATOR fail to comply with the provisions of this Section, then COUNTY shall provide TERMINAL OPERATOR with written notice of the use or compliance violation, and give the TERMINAL OPERATOR an opportunity to cure same within a reasonable time period, not exceeding sixty (60) calendar days of the date of the COUNTY's written notice. If the use or compliance violation is not cured by TERMINAL OPERATOR within this time period, then COUNTY shall have the right to (i) stop all TERMINAL OPERATOR's operations on the Current Premises, Interim Premises, and Final Premises (as applicable) until the use or compliance violation(s) is eliminated to COUNTY's satisfaction, and (ii) terminate this Agreement; unless the use or compliance violation is of a nature that it cannot be cured within sixty (60) calendar days and TERMINAL OPERATOR has since commenced curative measures in a reasonable and diligent manner.

10. TARIFF CHARGES

Except as otherwise provided herein, nothing contained in this Agreement shall be construed to confer upon TERMINAL OPERATOR and its third-party user(s) of its facilities and services, any special right with respect to payment of charges imposed by Port Everglades Tariff No. 12, amendments thereto and reissues thereof ("Port Everglades

Tariff" or "Tariff"). Except as otherwise provided herein, TERMINAL OPERATOR shall pay COUNTY for the utilization of facilities and services at Port Everglades including, but not limited to, wharfage and dockage in accordance with the charges imposed by Port Everglades Tariff.

11. PER CONTAINER (SHIPMOVES) RATES AND ANNUAL MINIMUM GUARANTEED PAYMENT

A. PER CONTAINER (SHIPMOVES) RATES

COUNTY and TERMINAL OPERATOR acknowledge and agree to the following per container (shipmoves) rates (such rates do not include applicable sales tax on crane rental usage) on TERMINAL OPERATOR CARGO handled through TERMINAL OPERATOR's marine terminal facility on the Current Premises and Interim Premises at Port Everglades, Florida, in lieu of payment of dockage, cargo and container unit wharfage charges, crane rental fees to include crane setup, shutdown, and crane standby of up to one (1) hour, and harbormaster fees. The per container (shipmoves) rates are based on TERMINAL OPERATOR guaranteeing to COUNTY payment for a minimum of seventy-five thousand (75,000) container (shipmoves) of TERMINAL OPERATOR CARGO annually until January 1, 2020 or until an earlier Final Premises Effective Date. TERMINAL OPERATOR CARGO under the prior Marine Terminal Lease and Operating Agreement dated June 14, 2005 between TERMINAL OPERATOR and COUNTY, as amended (the "Prior Agreement") was defined to include proprietary cargo of the original steamship lines named therein and their "legal successors in interest" referred to herein as ("the Steamship Lines"). These Steamship Lines are hereby grandfathered in and expressly included in the definition of TERMINAL OPERATOR CARGO under this Agreement. For purposes of this section

"legal successors in interest" shall include companies that have merged with or acquired all or substantially all of the stock or assets of one or more of the Steamship Lines. In addition, the term "TERMINAL OPERATOR CARGO" shall mean loaded or discharged container (shipmoves) at Port Everglades, which is: i) proprietary to one or more of the Steamship Lines or proprietary to a company, which is at least fifty-one percent (51%) owned and controlled directly or indirectly by one or more of the Steamship Lines (an "Affiliated Company"); or ii) from a vessel calling at Port Everglades, which vessel is subject to a Vessel Sharing Agreement ("VSA") or a Slot Charter Agreement ("SCA") between a Steamship Line or an Affiliated Company, and a third-party steamship line(s) filed with the Federal Maritime Commission (FMC); or iii) from a vessel calling at Port Everglades, which vessel is part of a "New Service" as defined herein. For the purposes of this provision, "New Service" shall mean a schedule of published vessel calls conducted by a container/cargo ocean carrier or container/cargo ocean transport alliance, which has not (as of the proposed New Service commencement date at Port Everglades) included Port Everglades in the vessel service call rotation of the New Service over the prior twelve (12) month period. The commencement date of a New Service shall be the date of the first vessel call at Port Everglades. TERMINAL OPERATOR must certify in writing to COUNTY's Port Everglades Department's Chief Executive/Port Director that the New Service will load/discharge a minimum of 5,000 container (shipmoves) at Port Everglades per twelve (12) month period.

COUNTY and TERMINAL OPERATOR acknowledge and agree that as of the Commencement Date of this Agreement, one or more of the Steamship Lines and their

Affiliated Companies, have filed with the FMC, VSA(s) and SCA(s) applicable to this Agreement, as set forth in Exhibit "F." TERMINAL OPERATOR shall over the Initial Term and each Option Term of this Agreement, timely provide COUNTY's Port Everglades Department's Chief Executive/Port Director with a copy of any additional VSA and SCA filing(s) applicable to this Agreement or documentation evidencing a Steamship Line's fifty-one percent (51%) ownership interest and control in an Affiliated Company claiming TERMINAL OPERATOR CARGO status hereunder. Upon COUNTY's Port Everglades Department's Chief Executive/Port Director's review of and concurrence with the VSA and SCA filing(s) submitted by TERMINAL OPERATOR, Exhibit "F" shall be amended accordingly (by action of the COUNTY's Port Everglades Department's Chief Executive/Port Director) to reflect any new Affiliated Companies, VSA(s) or SCA(s) applicable to this Agreement. TERMINAL OPERATOR shall, over the Initial Term and each Option Term of this Agreement, provide COUNTY's Port Everglades Department's Chief Executive/Port Director with written notice of the name(s) of the New Service and its applicable vessel(s) within fourteen (14) calendar days prior to the date(s) the New Service vessel(s) is scheduled to arrive at Port Everglades. TERMINAL OPERATOR shall also provide COUNTY's Port Everglades Department's Chief Executive/Port Director with written notice of any vessels added to or dropped from the New Service prior to the date such changes are to be made effective. Further, TERMINAL OPERATOR shall provide COUNTY's Port Everglades Department's Chief Executive/Port Director with written notice of the name(s) of any New Service and its applicable vessel(s), which plan to cease calling at Port Everglades ("Cancellation Notice"). The Cancellation Notice must be provided no

later than fourteen (14) calendar days prior to each annual anniversary date of the New Service commencement date. Failure by TERMINAL OPERATOR to timely provide COUNTY's Port Everglades Department's Chief Executive/Port Director with the required Cancellation Notice, shall result in COUNTY invoicing TERMINAL OPERATOR for the New Service's minimum 5,000 container (shipmoves) (less any realized activity in the twelve (12) month period in which it departs Port Everglades) to be billed by COUNTY and paid by TERMINAL OPERATOR at the then current per container (shipmoves) tier rate then in effect.

Any shortfall in the New Service minimum container (shipmoves) (5,000) as of each annual anniversary date of the New Service commencement date, shall be billed by COUNTY and paid by TERMINAL OPERATOR at the then current per container (shipmoves) tier rate in effect at the conclusion of the twelve (12) month period.

1) Beginning on the Commencement Date hereof, the first 75,000 container (shipmoves) of TERMINAL OPERATOR CARGO shall be charged at the rate of (\$43.0630) per container (shipmoves), and all TERMINAL OPERATOR CARGO in excess of 75,000 container (shipmoves) shall be charged at the rate of (\$40.5787) per container (shipmoves);

2) The TERMINAL OPERATOR CARGO per container (shipmoves) rates shall be adjusted annually, on the anniversary date of the Commencement Date hereof, as follows:

(a) 75,000 container (shipmoves) rate shall be increased to an amount equal to the product of the 75,000 container (shipmoves) rate during the immediately preceding year multiplied by the CPI multiplier, as provided in Article 4 herein, subject to an annual cap of 3%.

(b) 75,001 and greater container (shipmoves) rate shall be increased to an amount equal to the product of the 75,001 and greater container (shipmoves) rates during the immediately preceding year multiplied by the CPI multiplier, as provided in Article 4 herein, subject to an annual cap of 3%.

3) Notwithstanding the foregoing, COUNTY and TERMINAL OPERATOR expressly acknowledge and agree, that both tiers of the then current per container (shipmoves) rates for TERMINAL OPERATOR CARGO and related contract terms, including rental payments, shall be renegotiated in good faith by the Parties hereto within three (3) months prior to the Final Premises Effective Date. The newly renegotiated TERMINAL OPERATOR CARGO per container (shipmoves) rates, rental rates, and related contract terms to be incorporated into an "all in" bundled rate consistent with similarly situated parties, shall be memorialized by an amendment to this Agreement approved and executed by COUNTY's Port Everglades Department's Chief Executive/Port Director and TERMINAL OPERATOR. In the event the Parties hereto are unable to successfully renegotiate the TERMINAL OPERATOR CARGO per container (shipmoves) rates, rental rates, and related contract terms within the aforesaid three (3) month period, this

Agreement may be terminated by either Party hereto upon written notice to the other Party. In the event either Party hereto elects to terminate this Agreement for failure to successfully renegotiate the TERMINAL OPERATOR CARGO per container (shipmoves) rates, rental rates, and related contract terms, TERMINAL OPERATOR shall quit and surrender the Interim Premises to COUNTY within six (6) months from the date of the written termination notice.

4) TERMINAL OPERATOR CARGO per container (shipmoves) rates provided in this Section, do not include Port Everglades Tariff charges for breakbulk cargo, electricity, water, line handling services, and container crane standby of more than one (1) hour or any other Port Everglades Tariff charges not specified in subsection 11A hereinabove, all of which, shall be billed by COUNTY and except for line handling services, paid by TERMINAL OPERATOR at Port Everglades Tariff rates. In no event, shall the adjusted per container (shipmoves) rates established pursuant to this Section be less than the per container (shipmoves) rates in effect during the immediately prior twelve (12) month period. Line handling services are not billed to TERMINAL OPERATOR.

In determining the number of container (shipmoves) handled by TERMINAL OPERATOR (throughput) on the Current Premises, Interim Premises and Final Premises for the purpose of determining the applicable container (shipmoves) rate for TERMINAL OPERATOR CARGO, TERMINAL OPERATOR shall receive credit for both TERMINAL OPERATOR CARGO and third-party container (shipmoves) handled through the Current Premises, Interim Premises and Final Premises.

B. ANNUAL MINIMUM GUARANTEE PAYMENT

1) Effective upon the Commencement Date hereof, and for each and every successive contract year over the Initial Term hereof until the Final Premises Effective Date, TERMINAL OPERATOR shall guarantee and make annual payments to COUNTY (apportioned monthly pro-rata, as applicable). For the first year of this Agreement, TERMINAL OPERATOR shall pay COUNTY the sum of Three Million Two Hundred Twenty-nine Thousand Seven Hundred Twenty-five Dollars and Eighty-nine Cents (\$3,229,725.89) as Minimum Guaranteed Payment ("MGP"). The Parties hereto expressly acknowledge and agree that TERMINAL OPERATOR's annual MGP shall be adjusted for each and every successive year thereafter on the annual anniversary of the Commencement Date over the Initial Term hereof up to the Final Premises Effective Date. TERMINAL OPERATOR's annual MGP amount shall be increased to an amount equal to the product of the MGP sum required to be paid during the immediate preceding year and the CPI multiplier as provided in Article 4 herein, subject to an annual cap of 3%. COUNTY and TERMINAL OPERATOR expressly acknowledge and agree, that the annual MGP amounts shall be renegotiated in good faith by the Parties hereto within three (3) months prior to the earlier of December 31, 2019, or the Final Premises Effective Date. The newly renegotiated annual MGP amount(s) shall be memorialized by an amendment to this Agreement approved and executed by COUNTY's Port Everglades Department's Chief Executive/Port Director and TERMINAL OPERATOR. In the event the Parties hereto are unable to successfully

renegotiate the annual MGP amounts within the aforesaid three (3) month period, this Agreement may be terminated by either Party hereto upon written notice to the other Party. In the event either Party hereto elects to terminate this Agreement for failure to successfully renegotiate the annual MGP, TERMINAL OPERATOR shall quit and surrender the Interim Premises to COUNTY within six (6) months from the date of the written termination notice.

2) Effective on the Commencement Date hereof and for each and every successive year over the Initial Term hereof, TERMINAL OPERATOR shall be eligible for a monetary credit in an amount not to exceed 20% of its required annual MGP. TERMINAL OPERATOR shall become eligible for a credit only if the total of TERMINAL OPERATOR's actual annual TERMINAL OPERATOR CARGO container (shipmoves) is less than the guaranteed number of TERMINAL OPERATOR's CARGO container (shipmoves) for the prior contract year. The eligible credit shall equal the product of the amount of TERMINAL OPERATOR's CARGO container (shipmoves) short and the contract year's guaranteed rate for TERMINAL OPERATOR CARGO per container (shipmoves). The amount of TERMINAL OPERATOR's CARGO container (shipmoves) short used to determine the eligible credit cannot exceed the number of container (shipmoves) handled by TERMINAL OPERATOR (in the applicable contract year) for its third-party clients.

For example, if TERMINAL OPERATOR's annual guaranteed TERMINAL OPERATOR CARGO container (shipmoves) is 75,000 for a given year, but the actual annual TERMINAL OPERATOR CARGO container (shipmoves) count was

65,000, with third-party container (shipmoves) equaling 12,000, then TERMINAL OPERATOR's eligible credit would equal the product of TERMINAL OPERATOR's CARGO 10,000 container (shipmoves) short and the TERMINAL OPERATOR's CARGO per container (shipmoves) rate in effect for the given contract year. If the number of third-party container (shipmoves) was 4,000 in the given contract year, then the eligible monetary credit to TERMINAL OPERATOR would equal the product of 4,000 and the TERMINAL OPERATOR CARGO per container (shipmoves) rate in effect for that contract year. If TERMINAL OPERATOR's CARGO container (shipmoves) short was 20,000 with third-party container (shipmoves) equaling 15,000, then TERMINAL OPERATOR's eligible monetary credit would be the maximum allowed of 20% of 75,000 or 15,000 multiplied by the TERMINAL OPERATOR's CARGO per container (shipmoves) rate in effect for the given contract year. Any monetary credit amount shall be posted to TERMINAL OPERATOR's account and applied in twelve (12) equal installments by COUNTY against TERMINAL OPERATOR's monthly billings commencing not later than September 30th of each calendar year.

TERMINAL OPERATOR shall pay COUNTY the applicable contract year's MGP amount in twelve (12) equal monthly installments in advance on the first day of each and every month, without demand, setoff or deduction. Except as otherwise provided herein, in no event, shall any adjusted MGP amount established pursuant to the terms and conditions of this Agreement be less than the MGP amount in effect during the immediately prior twelve (12) month period.

3) MGP required to be paid by TERMINAL OPERATOR hereunder, shall be subject to the payment terms and conditions of this Agreement, including Port Everglades Tariff, and shall include applicable Florida sales tax. In addition to manifests and cargo reports required by Item 915 of the Port Everglades Tariff (which shall be provided by TERMINAL OPERATOR to Port Everglades Department within five (5) business days of a vessel call), TERMINAL OPERATOR shall report to COUNTY's Port Everglades Department on a monthly basis, the total amount of container (shipmoves) throughput on the Current Premises, Interim Premises, and Final Premises as applicable (including, all containers (shipmoves) handled by TERMINAL OPERATOR on the Current Premises, Interim Premises, and Final Premises for its third-party clients). The manifests and cargo reports shall be provided to said Department within five (5) business days following the end of each month and shall be in the forms attached hereto as composite Exhibit "G" and made a part hereof. The COUNTY's Port Everglades Department's Chief Executive/Port Director reserves the right to request TERMINAL OPERATOR to periodically provide the COUNTY's Port Everglades Department's Finance Division with such other cargo reports/records in order to maintain its statistical database.

4) TERMINAL OPERATOR CARGO containers (shipmoves) will be invoiced at the rates established hereinabove.

The invoices for container (shipmoves) handled through the Current Premises, Interim Premises, and Final Premises will be offset by the monthly MGP installment payments paid by TERMINAL OPERATOR to COUNTY.

Accordingly, all container (shipmoves) fees for TERMINAL OPERATOR CARGO billed each month, which are in excess of the monthly MGP installment amount paid by TERMINAL OPERATOR will be due and payable within 30 calendar days to COUNTY in accordance with the billing procedures and requirements of Port Everglades Tariff. At the end of each contract year of this Agreement, COUNTY shall recognize as revenue and retain any MGP balance, which has not been offset by container (shipmoves) charges for TERMINAL OPERATOR CARGO during the related contract year of the Agreement.

12. TERMINAL OPERATOR'S OBLIGATIONS

TERMINAL OPERATOR shall, at its expense:

- A. Observe and obey, and require its employees, guests, invitees and those doing business with it, to observe and obey such reasonable rules and regulations of Broward County (including amendments and supplements thereto) governing the conduct and operations of TERMINAL OPERATOR and others on the Current Premises, Interim Premises, and Final Premises as may from time to time be promulgated.
- B. Pay all license and permit fees and charges for the conduct of any business on the Current Premises, Interim Premises, and Final Premises before such amounts become delinquent.
- C. Not cause or permit any welding or burning on the Current Premises, Interim Premises, and Final Premises until all required permits have been obtained from COUNTY, City of Hollywood and the United States Coast Guard.

D. Not overload any paved area on the Current Premises, Interim Premises, and Final Premises beyond the design limits specified by the COUNTY's Port Everglades Department's Chief Executive/Port Director in writing from time to time, and shall repair any paved area damaged by such overloading.

E. Provide COUNTY with immediate notice of any and all spills, leaks or discharges of any size whatsoever of Pollutants (as defined in Section 26.A. hereof) arising from its operations on the Current Premises, Interim Premises, and Final Premises or in Port Everglades, and further provide COUNTY with not less than one (1) business day prior notice of all curative measures, remediation efforts and monitoring activities to be effected.

F. As required by law, provide the relevant regulatory authorities with notice of spills, leaks or discharges of Pollutants on the Current Premises, Interim Premises, and Final Premises or in Port Everglades, and have an updated contingency plan in effect for such discharges.

G. Provide COUNTY the right to inspect all documents relating in any way to the Current Premises, Interim Premises, and Final Premises and all activities thereon, including, but not limited to, writings regarding environmental issues, remediation efforts, etc. (such as manifests evidencing proper transportation and disposal of Pollutants, site assessments, sampling, and test results, etc.).

H. Cause its truck traffic to queue within the marine cargo terminal facility to avoid to the greatest extent possible, truck traffic queue on public roads and rights of way within Port Everglades.

13. ASSIGNMENT; SUBLETTING; SUBORDINATION

A. COUNTY CONSENT REQUIREMENTS; FACTORS AND STANDARD

TERMINAL OPERATOR shall not (i) sublet the Current Premises, Interim Premises or Final Premises or any part thereof; or (ii) permit any transfer, assignment, pledge, or encumbrance of any sublease; or (iii) transfer, assign, pledge, or otherwise encumber or subordinate this Agreement, or obligations hereunder; or (iv) allow same to be assigned by operation of law or otherwise (any such action being called an "Assignment") without COUNTY's prior written consent. The factors upon which COUNTY may base its decision on whether to grant such consent shall include, but not be limited to: (i) an assessment of whether the proposed assignee meets standards of creditworthiness, (ii) whether the Current Premises, Interim Premises, and Final Premises will be used in connection with the maritime industry for the purposes described herein, and (iii) an assessment of the ability of the proposed assignee to perform TERMINAL OPERATOR's obligations under this Agreement. In the event of any Assignment, the assignee shall be required, at COUNTY's option, to execute a written assumption agreement, agreeing to assume all of the terms and conditions of this Agreement, which assumption agreement must be in an acceptable form to COUNTY. All consents, required under this Section, shall not be unreasonably withheld.

B. NO RELEASE

In the event of any Assignment, TERMINAL OPERATOR shall not be released of any liability hereunder. COUNTY, as a condition of approving any Assignment or subletting, may increase the rent and fees payable hereunder, and may require

modification of any other terms or conditions of this Agreement and execution of additional documents, including an irrevocable guaranty of payment and performance from TERMINAL OPERATOR.

C. CHANGE IN TERMINAL OPERATOR'S STATUS

For purposes of this Section, an "Assignment" shall include: (i) any transfer of this Agreement by merger, consolidation or liquidation, or by operation of law, or (ii) if TERMINAL OPERATOR is a corporation, any change in ownership of or power to vote a majority of the outstanding voting stock of TERMINAL OPERATOR, or (iii) if TERMINAL OPERATOR is a limited or a general partnership or joint venture, any transfer of an interest in the partnership or joint venture, which results in a change in control of such partnership or joint venture from those controlling such partnership or joint venture, or (iv) if TERMINAL OPERATOR is a limited liability company, any change in ownership of or power to vote a majority of the membership interest of TERMINAL OPERATOR.

Notwithstanding the foregoing, the following shall not be deemed an "Assignment" for purposes of this Section, (i) a transfer of stock or interests in TERMINAL OPERATOR among its owners and/or their immediate families that are in place as of the date COUNTY executes this Agreement, or (ii) a transfer of stock or interests in TERMINAL OPERATOR resulting from the death of a stockholder, partner, joint venturer, or member, or (iii) any transfers of stock or interests in TERMINAL OPERATOR where same is publicly traded on a national stock exchange.

D. VOIDING OF ASSIGNMENT OR SUBLEASE; RIGHT TO COLLECT RENT

In the event TERMINAL OPERATOR shall take any action specified under this

Section without COUNTY's prior written consent, then any such Assignment or other action shall be deemed null and void, and of no force or effect, and in addition to all other available remedies, COUNTY shall be entitled to immediately terminate this Agreement. This Agreement may not be the subject of an Assignment for any period(s) during which a default by TERMINAL OPERATOR hereunder, which remains uncured.

In addition, if the Current Premises, Interim Premises, or Final Premises are occupied by any entity without COUNTY's prior written consent, then COUNTY may collect rent from any assigns, sublessee or anyone who claims a right to this Agreement or who occupies the Current Premises, Interim Premises, or Final Premises, but in no such event, shall the collection deemed a waiver by COUNTY of the provisions of this Section or any acceptance by COUNTY of any such assignee or sublessee.

E. SUBORDINATE TO COUNTY

TERMINAL OPERATOR acknowledges and agrees, that each sublessee of TERMINAL OPERATOR is subject to all of the terms and conditions of this Agreement, including, but not limited to, the requirement that each such sublessee must comply with all federal, state, and local laws, ordinances, rules, regulations, and orders applicable to the operations, and use of such sublessee on the Current Premises, Interim Premises, or Final Premises. Notwithstanding any Assignment or sublease of the Current Premises, Interim Premises, or Final Premises to which COUNTY has consented, TERMINAL OPERATOR shall remain responsible for insuring that each and every term and condition of this Agreement is abided by and complied with and, in that regard, any failure by any assignee or sublessee to abide by and comply with the terms and conditions of this Agreement shall

be deemed a default by TERMINAL OPERATOR, entitling COUNTY to any and all remedies available hereunder. Each sublease of the Current Premises, Interim Premises, or Final Premises to which COUNTY has consented, shall be subordinate in all respects to all terms and provisions of this Agreement and upon any termination of this Agreement, all such subleases of the Current Premises, Interim Premises, or Final Premises shall terminate contemporaneously with this Agreement.

F. MORTGAGE ON LEASEHOLD

No mortgage of this Agreement shall be binding upon COUNTY without its prior written consent. COUNTY will accept performance of a COUNTY approved leasehold mortgagee of any term and condition of this Agreement required to be performed by TERMINAL OPERATOR, with the same force and effect as if performed by TERMINAL OPERATOR. An approved leasehold mortgagee shall have ten (10) calendar days after the date on which COUNTY may otherwise terminate this Agreement as to the defaulting TERMINAL OPERATOR, to cure any default in the payment of rent or other monetary obligations required to be met hereunder, and thirty (30) calendar days after the date on which to cure any nonmonetary default hereunder.

COUNTY's Port Everglades Department shall, from time to time, upon written request, provide a leasehold mortgagee or TERMINAL OPERATOR with an estoppel certificate stating whether TERMINAL OPERATOR is in default, whether this Agreement is in full force and effect, and whether this Agreement has been modified. Notwithstanding any information or consent provided by COUNTY hereunder, no Assignment shall give TERMINAL OPERATOR or its assignee any lien or encumbrance upon the fee simple

ownership interest in the Current Premises, Interim Premises, and Final Premises, which remains vested in COUNTY.

14. ALTERATIONS; FIXTURES; IMPROVEMENTS AND REQUIRED APPROVALS

A. GENERAL

TERMINAL OPERATOR shall not design, develop, construct nor make any alterations, modifications or replacements to the Current Premises, Interim Premises, or Final Premises or portions thereof, without the prior written consent of the COUNTY's Port Everglades Chief Executive/Port Director. In the event any such action is taken or made without said prior written consent, then, upon written notice provided by COUNTY, TERMINAL OPERATOR shall remove same to the Port Everglades Department's satisfaction. In the event TERMINAL OPERATOR fails to comply with such written notice, said Department may take all required removal actions and TERMINAL OPERATOR shall pay the cost thereof to COUNTY within fifteen (15) calendar days after written demand therefor is sent.

B. TITLE TO IMPROVEMENTS AND FIXTURES; REMOVAL

All fixtures, structures, facilities, pavements, and other permanent improvements, and any additions and alterations made to the Current Premises, Interim Premises, and Final Premises (including those that are nailed, bolted, stapled, or otherwise affixed to the Current Premises, Interim Premises, and Final Premises) by TERMINAL OPERATOR, or at TERMINAL OPERATOR's direction, shall be and remain TERMINAL OPERATOR's property until the termination of this Agreement (whether by expiration or otherwise), at which time said improvements shall, at COUNTY's option, either (i) become COUNTY's

property and shall be surrendered with and remain on the Current Premises, Interim Premises, and Final Premises as applicable; or (ii) be removed by TERMINAL OPERATOR at its sole cost and expense and at the COUNTY's Port Everglades Department's direction.

C. LIENS

TERMINAL OPERATOR shall not do or permit to be done anything, which shall result in the imposition of any liens, claims or encumbrances on the Current Premises, Interim Premises, or Final Premises or any portion(s) thereof. If any lien or notice of lien shall be filed against the Current Premises, Interim Premises, or Final Premises or portions thereof or any improvements thereon, TERMINAL OPERATOR shall cause the same to be discharged of record by payment, deposit, bond, or order of a court of competent jurisdiction within thirty (30) calendar days after notice of the filing thereof. TERMINAL OPERATOR shall not be deemed to be COUNTY's agent so as to confer upon any contractor or subcontractor providing labor or materials to the Current Premises, Interim Premises, and Final Premises, a mechanic's lien upon COUNTY's estate under the provisions of Chapter 713, Florida Statutes, as amended from time to time. The provisions of this subsection shall not apply to any mortgage of TERMINAL OPERATOR's interest in this Agreement to which COUNTY has consented as provided herein. TERMINAL OPERATOR shall not create or permit any lien on any fixtures affixed to the Current Premises, Interim Premises, or Final Premises without obtaining in each instance, the prior written approval of COUNTY excluding, however, any purchase money security interest in any movable trade fixtures of the TERMINAL OPERATOR installed at the Current Premises, Interim Premises, or Final Premises.

Unless COUNTY, through its Board of County Commissioners, provides otherwise in writing, all of TERMINAL OPERATOR's assets, which are brought onto the Current Premises, Interim Premises, or Final Premises and used in connection with its business conducted thereon, shall be subject to COUNTY's landlord's lien on such assets.

D. CONSTRUCTION REQUIREMENTS

(i) All construction on the Current Premises, Interim Premises, or Final Premises shall be performed in such a manner as to provide that TERMINAL OPERATOR's improvements shall: (i) be safe and free from any hazards, and (ii) comply with all terms and conditions of this Agreement.

All improvements constructed by TERMINAL OPERATOR, its agents, or contractors, including, but not limited to, the plans and specifications relating to same, shall conform to all applicable federal, state, county, and municipal statutes, ordinances, building codes, fire codes, rules, and regulations; provided, however, that approval by the COUNTY's Port Everglades Department Chief Executive/Port Director of plans, specifications, designs and construction schedule shall not constitute a representation or warranty as to such conformity, and the responsibility therefor shall at all times remain with TERMINAL OPERATOR. Any additions, alterations or modifications to the Current Premises, Interim Premises, or Final Premises shall be in conformity and consistent with the Americans with Disabilities Act of 1990, as may be amended from time to time.

(ii) COUNTY's Port Everglades Department Chief Executive/Port Director shall review and approve TERMINAL OPERATOR's construction improvements,

plans, specifications, and construction schedules prior to TERMINAL OPERATOR commencing construction activities on the Current Premises, Interim Premises, or Final Premises. TERMINAL OPERATOR shall, following its receipt of a written Notice to Proceed from the COUNTY's Port Everglades Chief Executive/Port Director, immediately commence construction activities and installation of its improvements to the Current Premises, Interim Premises, or Final Premises. TERMINAL OPERATOR shall coordinate and perform all such construction of improvements in accordance with all applicable permitting agency requirements, as well as, Florida Power & Light Company. TERMINAL OPERATOR and its design professionals and contractors agree to meet with COUNTY's Port Everglades Chief Executive/Port Director's representatives in periodically scheduled meetings to assess the current status of completion of all improvements undertaken by TERMINAL OPERATOR as provided herein.

E. IMPROVEMENTS COMPLETED

Within sixty (60) calendar days after the final completion date of TERMINAL OPERATOR's improvements, TERMINAL OPERATOR shall provide to the COUNTY's Port Everglades Department, at TERMINAL OPERATOR's sole expense: (i) a complete set of "as-built" plans and specifications for all improvements, (ii) a certificate or acknowledgment of completion from all permitting agencies reflecting that TERMINAL OPERATOR's improvements are complete and that all required permits have been obtained and complied with, and (iii) a certified statement from the construction contractor(s) and design engineer

of record stating that the improvements are free and clear of all liens, claims or encumbrances by all suppliers, contractors, subcontractors, laborers, and vendors.

F. CONSTRUCTION PERFORMANCE AND PAYMENT BONDS

TERMINAL OPERATOR shall furnish to COUNTY within seven (7) calendar days of its receipt of the Notice to Proceed from the COUNTY's Port Everglades Department Chief Executive/Port Director the following:

a. Performance Bond and Payment Bond (Surety):

(1) A performance bond and payment bond in a form acceptable to the COUNTY.

(2) The Bonds shall be in the amount of one hundred percent (100%) of the construction amount guaranteeing to COUNTY, the completion and performance of the construction and development of the Current Premises, Interim Premises, and Final Premises, as well as, full payment of all suppliers, vendor, contractors, laborers, or subcontractors employed by TERMINAL OPERATOR. Such bonds shall be with a Surety company, which is qualified pursuant to the COUNTY's standards for Surety's on COUNTY construction projects as follows:

(a) Qualifications of Surety:

i) A separate performance bond and payment bond must be executed by a Surety company of recognized standing, authorized to do business in the state of Florida as Surety, having a resident agent in the state of Florida and

having been in business with a record of successful continuous operation for at least five (5) years.

ii) In addition to the above-minimum qualifications, the surety company must meet at least one of the following additional qualifications:

iii) The surety company shall hold a current certificate of authority as acceptable surety on federal bonds in accordance with United States Department of Treasury Circular 570, Current Revisions. If the amount of the Bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the surety company shall not exceed the underwriting limitation in the circular, and the excess risks must be protected by coinsurance, reinsurance, or other methods in accordance with Treasury Circular 297, revised September 1, 1978 (31 CFR Section 223.10 Section 223.111). Further, the Surety shall provide COUNTY with evidence satisfactory to COUNTY, that such excess risk has been protected in an acceptable manner.

iv) The Surety shall have at least the following minimum ratings in the latest revision of Best's Insurance Report:

<u>Size Amount of Bond</u>	<u>Ratings</u>	<u>Category</u>
500,001 to 1,000,000	B+	Class I
1,000,001 to 2,000,000	B+	Class II
2,000,001 to 5,000,000	A	Class III
5,000,001 to 10,000,000	A	Class IV
10,000,001 to 25,000,000	A	Class V
25,000,001 to 50,000,000	A	Class VI
50,000,001 or more	A	Class VII

(3) Such bonds shall continue in effect for one year after final completion and acceptance of the work by TERMINAL OPERATOR with liability equal to one hundred percent (100%) of the construction cost, or an additional bond shall be conditioned that TERMINAL OPERATOR will, upon notification by COUNTY, correct any defective or faulty construction work or materials, which appear within one year after completion of the construction work.

- OR -

b. Performance and Payment Guaranty:

In lieu of a performance bond and payment bond, TERMINAL OPERATOR may furnish an alternate form of security, which may be in the form of cash, money order, certified check, cashier's check or irrevocable letter of credit. Such alternate

forms of security shall be for the same purpose and shall be subject to the same conditions as those applicable to payment bond and performance bond.

G. COUNTY RENT CREDIT FOR TERMINAL OPERATOR REEFER PLUG IMPROVEMENTS

Except as otherwise provided hereinbelow, it is expressly acknowledged and agreed, that TERMINAL OPERATOR shall be responsible for all costs and expenses relating to (i) TERMINAL OPERATOR's improvements, including, but not limited to, the design, permitting, and construction thereof, and (ii) all other improvements necessary to TERMINAL OPERATOR's use of the Current Premises, Interim Premises, and Final Premises, including, but not limited to, improvements mandated by any governmental authority having jurisdiction over same but excluding improvements to be made by COUNTY as provided herein. COUNTY's Port Everglades Department shall provide TERMINAL OPERATOR with a one-time rent credit to reimburse TERMINAL OPERATOR for its costs and expenses associated with the design and construction of up to two hundred (200) reefer plugs on the Final Premises. TERMINAL OPERATOR's construction of up to two hundred (200) reefer plugs on the Final Premises must be substantially completed on or before the third anniversary of the Final Premises Effective Date, in order for TERMINAL OPERATOR to receive the rent credit. In no event, shall the rent credit exceed Six Hundred Thousand Dollars (\$600,000.00). TERMINAL OPERATOR shall provide COUNTY's Port Everglades Department with written receipts evidencing its costs and expenses incurred in connection with its design and construction of up to two hundred (200) reefer plugs on the Final Premises. Any approved rent credit shall be applied by

COUNTY's Port Everglades Department to TERMINAL OPERATOR's monthly rent invoices in equal amounts over the first twelve (12) months following the date the total amount of the rent credit is approved by COUNTY's Port Everglades Department. All of TERMINAL OPERATOR's books and records relating to the design and construction of up to two hundred (200) reefer plugs installed on the Final Premises shall be subject to inspection, copying and audit by COUNTY's auditors, upon reasonable written notice to TERMINAL OPERATOR. All such books and records shall be made available to COUNTY's auditors in Broward County, Florida.

15. MAINTENANCE AND REPAIR OF PREMISES

A. TERMINAL OPERATOR'S RESPONSIBILITY

TERMINAL OPERATOR shall throughout the Initial Term and each Option Term as applicable, assume the entire responsibility and shall relieve COUNTY from responsibility for all repair and maintenance whatsoever on the Current Premises, Interim Premises, and Final Premises (which shall include, without limitation, all improvements thereon), whether such repair or maintenance be ordinary or extraordinary, structural or otherwise. TERMINAL OPERATOR shall be required to keep at all times, the Current Premises, Interim Premises, and Final Premises in good, tenantable, useable condition, and without limiting the generality thereof, shall:

- 1) Maintain the Current Premises, Interim Premises, and Final Premises in a safe and neat manner, free from garbage, debris or other unsightly or unsanitary waste matter (whether solid or liquid). Any of such garbage, debris or other waste matter as may be temporarily stored in the open shall be kept in

suitable garbage and waste receptacles. TERMINAL OPERATOR shall use extreme care when effecting removal of all such waste matter and shall comply with all laws, ordinances, rules, regulations, and procedures of all applicable governmental authorities in so doing.

2) Maintain the Current Premises, Interim Premises, and Final Premises in a clean, orderly and safe condition so as to avoid injury to persons and property.

3) Repair any damage to the paving or other surface of the Current Premises, Interim Premises, and Final Premises caused by settlement, overloading, or by any oil, gasoline, grease, lubricants or other liquids or substances having a corrosive or detrimental effect thereon.

4) Provide and maintain all obstruction lights and similar devices, fire protection and safety equipment and all other equipment of every kind and nature required by any law, rule, order, ordinance, resolution or regulation of any applicable governmental authority.

5) Repair all damage to the Current Premises, Interim Premises, and Final Premises (including, but not limited to, any fencing, gates, lighting, or pavement) within thirty (30) calendar days, which is the result of any act, omission, negligence or misconduct on the part of TERMINAL OPERATOR, its employees, agents, contractors or invitees.

In the event TERMINAL OPERATOR fails in any material respect (i) to commence to maintain, clean, repair, replace, rebuild or paint within a period of thirty (30) calendar days (except seven (7) calendar days for maintenance items) after written notice from

COUNTY is given, or (ii) to continue to completion, in a diligent manner, the maintenance, repair, replacement, rebuilding or painting of the Current Premises, Interim Premises, or Final Premises as required under the terms of this Agreement, COUNTY's Port Everglades Department may, at its option, and in addition to any other remedies that may be available to it, maintain, repair, replace, rebuild, or paint all or any part of the Current Premises, Interim Premises, or Final Premises included in the written notice and all costs thereof shall be payable by TERMINAL OPERATOR to COUNTY within fifteen (15) calendar days after written demand therefor is sent.

B. COUNTY'S RESPONSIBILITY

COUNTY, at its sole expense, shall maintain and repair all above ground and underground utilities, which are now or may be subsequently located in Southport, Port Everglades to provide service to the Current Premises, Interim Premises, and Final Premises provided, however, that for repairs required due to any intentional or negligent act or omission on the part of TERMINAL OPERATOR, its employees, agents, contractors, or invitees, TERMINAL OPERATOR, at COUNTY's option, shall make all such repairs or reimburse COUNTY within fifteen (15) calendar days after written demand therefor is sent.

16. INGRESS AND EGRESS

TERMINAL OPERATOR, its invitees, licensees, agents, guests, contractors, and suppliers shall have the right of ingress and egress via appropriate public ways to be used in common with others having rights of passage within Port Everglades, provided that COUNTY may, from time to time, substitute other adequate means (considering TERMINAL OPERATOR's business operations) of ingress and egress.

COUNTY may, at any time, temporarily or permanently close or consent to or request the closing of any such roadway or other area at Port Everglades presently or hereafter used as such, so long as an alternate adequate means of ingress and egress is made available to the Current Premises, Interim Premises, and Final Premises (considering TERMINAL OPERATOR's business operations). TERMINAL OPERATOR hereby releases and discharges COUNTY, its successors and assigns, of and from any and all claims, demands and causes of action, arising or alleged to arise out of the closing of any street, roadway or other public ways, whether within or outside Port Everglades' jurisdictional area, provided COUNTY makes available an alternate adequate means of ingress and egress to the Current Premises, Interim Premises and Final Premises considering TERMINAL OPERATOR's business operations.

17. EASEMENT(S)

COUNTY reserves the right to maintain such easements on the Current Premises, Interim Premises, and Final Premises as may now or in the future be determined to be necessary to serve the needs of Port Everglades, and TERMINAL OPERATOR agrees to take the Current Premises, Interim Premises, and Final Premises subject to said easements. Easements will be used for, among other things, ingress and egress for other Port Everglades users, drainage, the installation of water distribution, sewage collection, underground electrical, telephone and security conduits, above ground street lighting and power poles. Notwithstanding, it is understood and agreed that COUNTY will restore (to the condition that existed immediately prior to the damage) any improvements, which TERMINAL OPERATOR has made, if such improvements are damaged by any installation

made by COUNTY. Furthermore, COUNTY will take reasonable steps to insure that any such installation be the least disruptive to TERMINAL OPERATOR's operations.

18. SIGNAGE, AWNINGS, CANOPIES, AND ADVERTISING MATTER

A. PRIOR CONSENT

TERMINAL OPERATOR will not place, suffer to be placed, or maintain on the Current Premises, Interim Premises, and Final Premises any sign, awning, canopy, or advertising matter without prior written consent of COUNTY's Port Everglades Department's Chief Executive/Port Director, which consent shall not be unreasonably withheld. If such consent is granted by COUNTY's Port Everglades Department's Chief Executive/Port Director, TERMINAL OPERATOR shall maintain such item(s) in a safe and working condition at all times.

B. REMOVAL

Upon the expiration or termination of this Agreement, TERMINAL OPERATOR shall remove, obliterate, or paint out, as COUNTY's Port Everglades Department's Chief Executive/Port Director may direct, any and all sign(s), awning(s), canopy, and advertising matter on the Current Premises, Interim Premises, and Final Premises and, in connection therewith, TERMINAL OPERATOR shall restore that portion of the Current Premises, Interim Premises, and Final Premises affected by same to the condition, which existed prior to its placing thereon. In the event of a failure on the part of TERMINAL OPERATOR to so remove, obliterate, or paint out and so restore the Current Premises, Interim Premises, and Final Premises, COUNTY's Port Everglades Department may elect to perform the necessary work at TERMINAL OPERATOR's expense.

19. PARKING

TERMINAL OPERATOR's use of parking spaces(s) in Port Everglades shall be subject to and in accordance with COUNTY's traffic and parking regulations set forth in Section 23-29, et seq., Broward County Code, and Port Everglades Tariff. TERMINAL OPERATOR shall be responsible for providing adequate parking facilities on the Current Premises, Interim Premises, and Final Premises to include, but not be limited to, its employees, operators, and invitees.

20. UTILITIES**A. GENERALLY**

COUNTY shall provide electrical, water distribution and sanitary sewer collection infrastructure for the Current Premises, Interim Premises, and Final Premises. TERMINAL OPERATOR shall coordinate directly with electric and telephone service providers, and COUNTY's Port Everglades Department to obtain electric service, telephone service, water service, and sewer service, respectively, to its facilities constructed or placed upon the Current Premises, Interim Premises, and Final Premises. It shall be the sole responsibility of TERMINAL OPERATOR at its expense, to coordinate and provide meter and all required service connections for electric service, telephone service, water service, and sewer service commencing from the COUNTY provided infrastructure at Southport, Port Everglades to and on the Current Premises, Interim Premises, and Final Premises. COUNTY shall not be obligated to perform or furnish any services in connection with the Current Premises, Interim Premises, and Final Premises, or any services at any time while TERMINAL OPERATOR remains in default hereunder, after the period to cure such default

has expired. No failure, delay, or interruption in supplying electric services or other utilities shall be construed as an eviction of TERMINAL OPERATOR, or a grounds for any abatement of payments required to be made hereunder or claims by TERMINAL OPERATOR against COUNTY for damages.

B. CHARGES

TERMINAL OPERATOR shall make the appropriate direct billing arrangements with the appropriate utility providers within thirty (30) days following its occupancy of the Current Premises, Interim Premises, and Final Premises.

Notwithstanding, TERMINAL OPERATOR shall pay to COUNTY on a monthly basis as billed by COUNTY, its pro rata portion of the common use electric charges based on total square footage occupied by TERMINAL OPERATOR, and water and sewer charges based on the number of gallons of water utilized on the Current Premises, Interim Premises, and Final Premises, along with applicable Florida sales tax. All such charges shall be paid to COUNTY within fifteen (15) calendar days of invoice date (demand therefor).

21. SECURITY

TERMINAL OPERATOR shall, at its sole cost and expense, be responsible for security of the Current Premises, Interim Premises, and Final Premises and all improvements thereon and shall take and require others to take as needed, whatever security precautions are necessary to protect the Current Premises, Interim Premises, and Final Premises, improvements thereon, and all persons and property thereon. In addition, TERMINAL OPERATOR and COUNTY acknowledge that security measures at Port

Everglades will be increased and that such efforts will likely impact the Current Premises, Interim Premises, and Final Premises. In this regard, TERMINAL OPERATOR agrees to cooperate with COUNTY's efforts to increase security and agrees to comply with all security rules and regulations (whether imposed by the United States Customs and Border Protection, the United States Coast Guard, or COUNTY). TERMINAL OPERATOR shall, at its sole cost and expense, be responsible for complying with all security-related measures that impact the Current Premises, Interim Premises, and Final Premises, TERMINAL OPERATOR and its employees, representatives, contractors, guests, and invitees.

22. RIGHT TO ENTER TO INSPECT, REPAIR

A. INSPECTION

COUNTY, by its officers, employees, agents, representatives and contractors shall have the right at all reasonable times to enter upon the Current Premises, Interim Premises, and Final Premises for the purpose of inspecting same, for observing the performance by TERMINAL OPERATOR of its obligations under this Agreement and for the doing of any act or thing, which COUNTY may be obligated or have the right to do under this Agreement or otherwise.

B. REPAIR

Without limiting the generality of the foregoing, COUNTY, by its officers, employees, agents, representatives, contractors and furnishers of utilities and other services, shall have the right, at its own cost and expense, for its own benefit or for the benefit of others at Port Everglades, to maintain existing and future utility, mechanical, electrical and other

systems, and to enter upon the Current Premises, Interim Premises, and Final Premises at all reasonable times to make such repairs, replacements or alterations thereto as may, in the opinion of COUNTY, be deemed necessary or advisable and from time to time to construct or install over, in or under the Current Premises, Interim Premises, and Final Premises such systems or parts thereof and in connection with such maintenance to use the Current Premises, Interim Premises, and Final Premises for access to other parts of Port Everglades otherwise not conveniently accessible; provided, however, that in the exercise of such rights of access, repair, alteration or new construction, COUNTY shall not unreasonably interfere with the actual use and occupancy of the Current Premises, Interim Premises, and Final Premises by TERMINAL OPERATOR.

C. REMOVAL OF OBSTRUCTIONS

In the event that any personal property of TERMINAL OPERATOR shall obstruct the access of COUNTY, its officers, employees, agents, or contractors to any of the existing or future utility, mechanical, electrical and other systems and thus shall interfere with the inspection, maintenance or repair of any such system, TERMINAL OPERATOR shall move such property, as directed by COUNTY, in order that access may be had to the system or part thereof for its inspection, maintenance, or repair, and if TERMINAL OPERATOR shall fail to so remove such property after direction from COUNTY's Port Everglades Department to do so, COUNTY may move it and TERMINAL OPERATOR hereby agrees to pay COUNTY's costs of such moving upon demand.

D. NO EVICTION CONSTRUED

The exercise of any or all of the foregoing rights by COUNTY or others shall not be or be construed to be an eviction of TERMINAL OPERATOR nor be made the grounds for any abatement of payments nor any claim or demand for damages, consequential or otherwise.

23. SURRENDER AND ACCEPTANCE; REMOVAL OF PROPERTY

A. SURRENDER

TERMINAL OPERATOR covenants and agrees to promptly yield and deliver peaceably to COUNTY, on the effective termination date or expiration date of this Agreement, the Current Premises, Interim Premises, and Final Premises (as applicable) in good condition, reasonable wear and tear excepted.

B. ACCEPTANCE OF SURRENDER

No agreement of surrender shall be valid unless and until the same shall have been reduced to writing and signed by the duly authorized representatives of COUNTY and TERMINAL OPERATOR in a document of equal dignity and formality herewith. Except as expressly provided in this Agreement, neither the doing of nor any omission to do any act or thing by any of the officers, agents, or employees of COUNTY shall be deemed an acceptance of a surrender.

C. REMOVAL OF PROPERTY

TERMINAL OPERATOR shall have the right at any time during the Initial Term and each Option Term as applicable, to remove its inventories and other personal property from the Current Premises, Interim Premises, and Final Premises. If TERMINAL OPERATOR

shall fail to remove its personal property by the termination or expiration date of this Agreement or as otherwise required herein, then TERMINAL OPERATOR shall be considered to be holding over under Florida law. In such event, COUNTY shall pursue its legal options, including, but not limited to: (i) title to personalty shall vest in COUNTY, at no cost to COUNTY; or (ii) COUNTY may remove such property to a public warehouse for deposit; or (iii) COUNTY may retain the same in its own possession and sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage, and sale; second, to any sums owed by TERMINAL OPERATOR to COUNTY with any balance remaining to be paid to TERMINAL OPERATOR. If the expenses of such removal, storage, and sale shall exceed the proceeds of sale, TERMINAL OPERATOR shall pay such excess to COUNTY within fifteen (15) calendar days after written demand therefor is sent. The provisions of this Section shall survive the termination or expiration of this Agreement.

24. INDEMNITY

TERMINAL OPERATOR shall at all times hereafter indemnify, hold harmless and, at the option of the Broward County Attorney, defend or pay for an attorney selected by the Broward County Attorney to defend COUNTY, its officers, agents, servants, and employees against any and all claims, demands, fines, penalties, causes of action, losses, liabilities, and expenditures of any kind, including, without limitation, attorney fees, court costs, and expenses, resulting from or in any manner arising out of an intentional or negligent act or omission of TERMINAL OPERATOR, its officers, employees, agents, servants, invitees, or contractors related to the subject matter of this Agreement including,

without limitation, any and all claims, demands, or causes of action of any nature whatsoever resulting from injuries, sickness or death of persons, or damage sustained to property. TERMINAL OPERATOR agrees to bind specifically, its port customers, which are serviced on the Current Premises, Interim Premises, and the Final Premises, contractors, subcontractors and consultants it engages for the performance of its obligations hereunder to this indemnity provision for the benefit of COUNTY. The provisions of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Port Everglades Department and the Broward County Attorney, any sums due TERMINAL OPERATOR under this Agreement by COUNTY may be retained by COUNTY until all of COUNTY's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved. Any sums withheld by COUNTY shall not be subject to payment of interest by COUNTY.

25. INSURANCE

A. TERMINAL OPERATOR shall maintain, at its sole cost and expense at all times during the Initial Term and Option Term of this Agreement, the insurance coverages set forth in this Article.

Such policies shall be issued by U.S. Treasury approved companies authorized to do business in the state of Florida, with a minimum AM Best financial rating of A-. Coverage shall be afforded on a form no more restrictive than the latest edition of the respective Insurance Services Office policy. In the case of coverage for U.S. Longshoremen & Harbor Workers Act, insurance may be through a group self-insurer authorized to provide such coverage by the U.S. Department of Labor. TERMINAL

OPERATOR shall be responsible for any policy deductibles or self-insured retentions. TERMINAL OPERATOR shall specifically protect COUNTY and the Broward County Board of County Commissioners by naming "Broward County" as an additional insured on a primary and noncontributory basis under the General Liability Policy, as well as on any Excess Liability Policy. The official title of the certificate holder is Broward County. This official title shall be used in all insurance documentation.

1) Commercial Liability Insurance. Commercial General Liability Insurance with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for bodily injury and property damage liability and Five Million Dollars (\$5,000,000.00) per aggregate including coverage for:

Premises and/or operations.

Independent contractors.

Broad Form Contractual Coverage applicable to this specific Agreement, including any hold harmless and/or indemnification agreement.

Personal Injury.

2) Business Automobile Liability. Business Automobile Liability insurance with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence, combined single limit for bodily Injury and property damage.

3) Excess Liability /Umbrella Policy with minimum limits of Five Million Dollars (\$5,000,000.00) each occurrence. Broward County shall be named as an additional insured unless policy provides coverage on a true and pure follow-form basis.

4) Workers' Compensation Insurance. Workers' Compensation insurance shall apply for all employees in compliance with Chapter 440, Florida Statutes, the "Workers' Compensation Law" of the state of Florida, and all applicable federal laws. In addition, the policy(ies) must include:

Employers' Liability with a limit of One Million Dollars (\$1,000,000.00) each accident.

5) If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen & Harbor Workers Act and Jones Act.

6) Environmental Impairment Liability. Environmental Impairment Liability with clean-up costs and including coverage for sudden and accidental pollution releases with minimum limits of One Million Dollars (\$1,000,000.00) per claim, and Two Million Dollars (\$2,000,000.00) per aggregate. Coverage shall remain in force for three (3) years after the expiration date of this Agreement.

B. TERMINAL OPERATOR shall furnish to COUNTY's Contract Administrator proof of insurance in the form of a Certificate of Insurance and endorsements, evidencing the insurance coverage specified by this Article upon execution of this Agreement. TERMINAL OPERATOR's failure to provide to COUNTY proof of insurance shall provide the basis for the termination of this Agreement.

C. Coverage is not to cease and is to remain in force until all performance required of TERMINAL OPERATOR is completed. A certified copy of any policy required by this Article shall be provided to COUNTY upon request. COUNTY shall be notified

within 30 days of any cancellation or restriction of coverage. If any of the insurance coverage will expire prior to the completion of the work, evidence of policy renewal shall be furnished upon expiration.

D. COUNTY reserves the right to review and revise any insurance requirements at the time of renewal or amendment of this Agreement, including, but not limited to, deductibles, limits, coverage, and endorsements.

26. ENVIRONMENTAL IMPAIRMENT; CONTAINMENT AND REMOVAL

A. TERMINAL OPERATOR acknowledges and agrees that COUNTY makes no representations or warranties whatsoever as to whether Pollutants (as hereinafter defined) exist on or under the Current Premises, Interim Premises, and Final Premises or the improvements in violation of any federal, state, or local law, rule, or regulation or in violation of any order or directive of any federal, state, or local court or entity with jurisdiction of such matter. "Pollutants" refer to and include all derivatives or by-products of any one or more of the following terms as defined by applicable local, state, or federal laws or regulations: hazardous substances, hazardous materials, hazardous waste, toxic substances, toxic pollutants; or such other pollutants, contaminants, substances, materials, and wastes as are or become regulated under applicable local, state, or federal laws or regulations. TERMINAL OPERATOR acknowledges, represents and warrants to COUNTY that it has made or will make sufficient inspection of the Current Premises, Interim Premises, and Final Premises and the improvements thereon to satisfy itself as to the presence or absence of any such Pollutants. COUNTY shall have no liability for any pre-existing environmental impairments, liabilities or conditions or any other environmental

impairments, liabilities, or conditions on the Current Premises, Interim Premises, and Final Premises, not caused by COUNTY, its agents, employees, or invitees. As established by the environmental baseline audits and environmental reports performed and to be performed as provided herein, TERMINAL OPERATOR shall have no liability for any pre-existing environmental impairment, liabilities, or conditions or any other environmental impairments, liabilities or conditions on the Current Premises, Interim Premises and Final Premises not caused by TERMINAL OPERATOR, its agents, contractors, employees, or invitees. TERMINAL OPERATOR shall not be liable for any migration of Pollutants or rise in the level of any Pollutants on the Current Premises, Interim Premises, and Final Premises as a result of any migration of Pollutants or rise in the level of the Pollutants on the Current Premises, Interim Premises, and Final Premises, which were not caused by the TERMINAL OPERATOR, its agents, contractors, employees, or invitees. TERMINAL OPERATOR shall only be liable for the release of Pollutants on the Current Premises, Interim Premises, and Final Premises caused by TERMINAL OPERATOR, its agents, contractors, employees, or invitees.

B. The discharge of any Pollutants on the Current Premises, Interim Premises, and Final Premises or in Port Everglades jurisdictional area, in violation of any federal, state, or local law, rule or regulation, or in violation of an order or directive of any federal, state, or local court or entity is strictly prohibited. Any such discharge by TERMINAL OPERATOR, its agents, contractors, employees, or invitees, shall be, at TERMINAL OPERATOR's expense, and upon COUNTY's demand, immediately contained, removed and abated to the satisfaction of COUNTY and any court or regulatory entity having

jurisdiction over the Pollutant discharge. If TERMINAL OPERATOR does not take immediate action to have such Pollutants contained, removed, and abated as necessary, COUNTY may undertake the containment, removal and abatement action(s) for the discharge; however, any such action by COUNTY shall not relieve TERMINAL OPERATOR of its obligations under this Agreement or as imposed by law. No action taken by either TERMINAL OPERATOR or COUNTY to contain or remove Pollutants, or to abate a discharge, whether such action is taken voluntarily or not, shall be construed as an admission of liability as to the source of or the person who caused the Pollutant discharge.

C. If COUNTY arranges for the containment, removal, and abatement of any Pollutants in Port Everglades, which were caused by TERMINAL OPERATOR, its employees, sublessees, invitees, agents, contractors, or subcontractors the costs of such action(s) incurred by COUNTY shall be paid by TERMINAL OPERATOR to COUNTY immediately upon COUNTY's written demand.

D. TERMINAL OPERATOR shall not be liable for the discharge of any Pollutants on the Current Premises, Interim Premises, or Final Premises caused by the negligence or willful misconduct of the COUNTY. Nothing herein shall relieve TERMINAL OPERATOR of its general duty to cooperate with COUNTY in ascertaining the source and, containing, removing, and abating any Pollutants on the Current Premises, Interim Premises, and Final Premises. COUNTY, its employees, contractors, and agents, shall have the right at all times to enter the Current Premises, Interim Premises, and Final Premises for the purposes of the foregoing activities or conducting such environmental inspections, audits, testing, or sampling as it deems appropriate. In addition, TERMINAL OPERATOR hereby

agrees that upon any Assignment of this Agreement, COUNTY shall have the right to have a "Phase I" environmental audit of the Current Premises, Interim Premises, and Final Premises (as applicable) conducted at TERMINAL OPERATOR's expense, and if such "Phase I" environmental audit indicates that further testing and studies should be conducted, to include, but not be limited to, soil samples and water samples, then COUNTY shall have the right to have such further testing and studies conducted at TERMINAL OPERATOR's sole expense. TERMINAL OPERATOR shall reimburse COUNTY for the cost of such testing and studies within fifteen (15) calendar days after written demand therefor is sent.

E. In the event COUNTY shall arrange for the remediation of Pollutants on the Current Premises, Interim Premises, or Final Premises that are not TERMINAL OPERATOR's responsibility to correct, and if COUNTY's remediation activities prevent TERMINAL OPERATOR from using the Current Premises, Interim Premises, and Final Premises for its intended purposes, then from the date that the use of any portion of the Current Premises, Interim Premises, or Final Premises for its intended purposes is precluded and until said portion again becomes available for TERMINAL OPERATOR's use, MGP and rent shall be abated based on the rate applicable to that pro rata portion of the Current Premises, Interim Premises, or Final Premises not usable. In no event, shall TERMINAL OPERATOR be entitled to any amount on account of its lost profits, lost rentals, or other damages as a result of COUNTY's remediation activities.

F. The provisions of this Section shall survive the expiration or termination of this Agreement.

27. DEFAULT; TERMINATION FOR CAUSE

A. TERMINATION AFTER NOTICE

If any one or more of the following Triggering Events defined in Section B below shall occur, or at any time thereafter during the continuance of such event, same shall be an event of default under this Agreement and COUNTY may, at its option, terminate the rights of TERMINAL OPERATOR hereunder by giving fourteen (14) calendar days written notice thereof, which termination shall be effective upon the date specified in such notice, and COUNTY may exercise any and all other remedies available to COUNTY hereunder or at law or in equity.

In the event of a termination by COUNTY, TERMINAL OPERATOR shall have no further rights under this Agreement and shall cease forthwith all operations upon the Current Premises, Interim Premises, and Final Premises (as applicable), and COUNTY, its agents, employees, and representatives shall have the right to enter the Current Premises, Interim Premises, and Final Premises (as applicable), and remove all property therefrom, and to accelerate and declare immediately due and payable all unpaid rental amounts due and other sums required to be paid under this Agreement. In addition, TERMINAL OPERATOR shall be liable for all damages incurred by COUNTY in connection with TERMINAL OPERATOR's default, including, without limitation, all direct damages, such as collection costs and reasonable attorney's fees, as well as indirect and consequential damages. The exercise by COUNTY of any right of termination shall be without prejudice to any other such rights and remedies. No remedy herein confirmed upon or reserved to

COUNTY is intended to be exclusive of any other remedy herein provided or otherwise available, and each and every remedy shall be cumulative.

B. TRIGGERING EVENTS

Any one or more of the following events shall constitute a Triggering Event:

- 1) TERMINAL OPERATOR shall voluntarily abandon, desert, or vacate the Current Premises, Interim Premises, or Final Premises for a period of thirty (30) consecutive calendar days; or
- 2) Any lien, claim, or other encumbrance, which is filed against the Current Premises, Interim Premises, or Final Premises is not removed or if COUNTY is not adequately secured by bond or otherwise, within thirty (30) calendar days after TERMINAL OPERATOR has received notice thereof; or
- 3) TERMINAL OPERATOR shall fail to pay the rentals within fifteen (15) calendar days following the date on which such payments are due to COUNTY; or
- 4) TERMINAL OPERATOR shall fail to make any other payment required hereunder when due to COUNTY and shall continue in its failure to make any such other payments required hereunder for a period of fifteen (15) calendar days after demand for payment is sent; or
- 5) TERMINAL OPERATOR shall take any action described by Section 13 hereof without the prior written consent of COUNTY; or
- 6) The discovery of any material misrepresentation or fraudulent statement made to COUNTY in connection with any application or forms submitted to COUNTY in connection with this Agreement, following notice by COUNTY and a

failure by TERMINAL OPERATOR to explain the matter to COUNTY's satisfaction within thirty (30) calendar days after such notice is sent; or

7) TERMINAL OPERATOR shall fail to keep, perform, and observe each and every promise, covenant, and term set forth in this Agreement on its part to be kept, performed, or observed within thirty (30) calendar days after notice to cure default is sent by COUNTY (except where fulfillment of its obligation requires activity over a greater period of time and TERMINAL OPERATOR shall have commenced to perform whatever may be required for fulfillment within thirty (30) calendar days after notice is sent and continues such performance without interruption).

8) By or pursuant to, or under authority of any legislative act, resolution, or rule, or any order or decree of any court or governmental board, agency, or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of TERMINAL OPERATOR, and such possession or control shall continue in effect for a period of thirty (30) calendar days; or

9) Any business is conducted, or service is performed, or product is sold from the Current Premises, Interim Premises, or Final Premises that is not specifically authorized by this Agreement, and such activity does not cease within ten (10) calendar days after receipt of notice to that effect.

C. Then upon the occurrence of any event set forth in (B), above, or at any time thereafter during the continuance thereof, COUNTY may, at its option, immediately terminate this Agreement, and all rights of TERMINAL OPERATOR hereunder by giving

written notice thereof, which termination shall be effective upon the date specified in such notice and COUNTY may exercise any and all other remedies available to COUNTY hereunder or at law or in equity. In the event of any such termination, TERMINAL OPERATOR and its sublessee(s) shall immediately quit and surrender the Current Premises, Interim Premises or Final Premises (as applicable) to COUNTY and shall cease operations at Port Everglades. Any such termination shall be without prejudice to any remedy for arrears of payments due hereunder or breach of covenant, or damages for the balance of the rent payable hereunder through the Initial Term and each Option Term of this Agreement, or any other damages or remedies whatsoever.

D. HABITUAL DEFAULT

Notwithstanding the foregoing, in the event TERMINAL OPERATOR defaults in the performance of or breaches any of the terms, covenants and conditions required herein to be kept and performed by TERMINAL OPERATOR two (2) or more times in two (2) consecutive months, and regardless of whether TERMINAL OPERATOR has cured each individual condition of breach or default, TERMINAL OPERATOR may be determined by COUNTY's Port Everglades Department to be a "habitual violator." At the time that such determination is made, said Department shall issue to TERMINAL OPERATOR a written notice advising of such determination and citing the circumstances therefor. Such notice shall also advise TERMINAL OPERATOR that there shall be no further notice or grace periods to correct any subsequent breaches or defaults and that any subsequent breaches or defaults of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and collectively, shall constitute a condition of noncurable default

and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, COUNTY may terminate this Agreement upon the giving of written notice of termination to TERMINAL OPERATOR, such termination to be effective upon delivery of the notice to TERMINAL OPERATOR.

E. TERMINATION WITHOUT NOTICE

The occurrence of any of the following during this Agreement's Initial Term or each Option Term (as applicable), shall immediately confer upon COUNTY the right to terminate this Agreement without notice, in its sole discretion upon the terms and conditions set forth below:

- 1) If TERMINAL OPERATOR or an officer, director, executive, partner, member, shareholder, employee, or agent who is active in the management of TERMINAL OPERATOR is found guilty or convicted of illegal conduct or activity (with or without an adjudication of guilt) as a result of a jury verdict, nonjury trial, entry of a plea of guilty or nolo contendere and the illegal conduct or activity (i) is considered to be a public entity crime as defined by Chapter 287, Florida Statutes, as amended; or (ii) is customarily considered to be a "white collar crime" or theft-related crime such as fraud, smuggling, embezzlement, or misappropriation of funds; or (iii) involves an act of moral turpitude meaning conduct or acts that tend to degrade principals or owners in society or bring them into public hatred, contempt, scorn, or ridicule, or that tends to shock, insult, or offend the community or ridicule public morals or decency or harm the image of COUNTY by virtue of its association with TERMINAL OPERATOR; or (iv) results in a felony conviction. TERMINAL

OPERATOR acknowledges and agrees, that the termination or resignation of the offending person from TERMINAL OPERATOR before a felony conviction is entered, does not impair or otherwise restrict or limit COUNTY's right to terminate this Agreement without notice under this Section; or

2) Suspension or revocation of TERMINAL OPERATOR's operations by a governmental unit or agency having jurisdiction over the Current Premises, Interim Premises, and Final Premises, and the business being conducted thereon, regardless of the length of such suspension or revocation.

F. NO WAIVER

No waiver by COUNTY of any default on the part of TERMINAL OPERATOR in performance of any of the terms, covenants, or conditions hereof to be performed, kept or observed by TERMINAL OPERATOR shall be or be construed to be a waiver by COUNTY of any other or subsequent default in performance of any of the said terms, covenants, and conditions.

28. DAMAGE BY CASUALTY

If the Current Premises, Interim Premises, or Final Premises is damaged by casualty not caused by an act attributable to TERMINAL OPERATOR or COUNTY, and thereby becomes untenable, COUNTY may elect to commence with the repairs within ninety (90) calendar days of the damage. If COUNTY does not elect to commence with the repairs, TERMINAL OPERATOR shall commence the required repairs and request all applicable insurance proceeds be released to make timely payments for such needed repairs. If the Current Premises, Interim Premises, or Final Premises is not fully repaired

20 12 30

within ninety (90) calendar days from the date repairs are commenced by either Party hereto and remains untenable, either Party hereto by written notice to the other Party may cancel this Agreement and rental and MGP payments shall be charged by COUNTY to TERMINAL OPERATOR only up to the date the Current Premises, Interim Premises, or Final Premises (as applicable) became untenable.

It is expressly agreed and understood that COUNTY shall not be liable for any damage or injury to persons or property caused by water, which may be sustained by TERMINAL OPERATOR resulting from carelessness, negligence or improper conduct on the part of any third-party in Port Everglades.

29. NOTICES

Any notices required by this Agreement or by law shall be given in writing and shall be sent by registered or certified mail by depositing the same in the United States mail in the continental United States, postage prepaid, or by hand delivery or by overnight courier. Any such notice mailed as provided hereunder shall be deemed effective and served as of the date of the mailing. Any notice given by hand delivery or overnight courier shall be deemed to have been given upon receipt. Either Party hereto shall have the right, by giving written notice to the other, to change the address as which its notices are to be received. Until any such change is made, notices to COUNTY shall be delivered as follows:

Broward County, Port Everglades Department
ATTN: Chief Executive/Port Director
1850 Eller Drive
Fort Lauderdale, Florida 33316

201230

With a copy to:

County Administrator
Governmental Center
115 S. Andrews Avenue
Fort Lauderdale, Florida 33301

Until any such change is made, notices to TERMINAL OPERATOR shall be delivered as follows:

TERMINAL OPERATOR:

Florida International Terminal, LLC
3800 McIntosh Road
Fort Lauderdale, Florida 33316
ATTN: Jose Diaz

30. INSOLVENCY

If TERMINAL OPERATOR becomes insolvent or bankruptcy proceedings are begun by or against TERMINAL OPERATOR, and within thirty (30) calendar days thereof TERMINAL OPERATOR fails to secure a discharge thereof, or if TERMINAL OPERATOR should make an assignment for the benefit of creditors before the end of the Initial Term or each Option Term (as applicable) of this Agreement, COUNTY is hereby irrevocably authorized, at its option, to forthwith cancel this Agreement as for a default. COUNTY may elect to accept rent and other required compensation from the receiver, trustee, or other judicial officer during the term of their occupancy in their fiduciary capacity without affecting COUNTY's rights under this Agreement, but no receiver, trustee, or other judicial officer shall have any right, title or interest in the Current Premises, Interim Premises, and Final Premises.

31. TENANCY AFTER AGREEMENT TERM EXPIRES

It is agreed and understood that any holding over of TERMINAL OPERATOR after the termination of this Agreement shall not renew and extend same, but shall operate and be construed as a tenancy from month to month, and TERMINAL OPERATOR agrees to pay to COUNTY the annual compensation and all other charges required to be paid hereunder during any such period. COUNTY, at its option, may impose a higher rental payment schedule during any holdover period as permitted by Florida law. TERMINAL OPERATOR shall be liable to COUNTY for all losses and damages on account of any such holding over against COUNTY's will after the termination of this Agreement, whether such loss or damage be contemplated at the execution of this Agreement or not. It is expressly agreed, that acceptance of the foregoing payments by COUNTY, shall not give TERMINAL OPERATOR any right to remain in possession nor shall it constitute a waiver by COUNTY of its right to possession.

32. NONLIABILITY OF COUNTY INDIVIDUALS

No commissioner, director, officer, agent, or employee of COUNTY shall be charged personally or held contractually liable by or to TERMINAL OPERATOR under any term or condition of this Agreement, or of any supplement, modification, or amendment to this Agreement, or because of any breach thereof, or because of its or their execution or attempted execution of this Agreement.

33. COOPERATION AMONG PARTIES

A. TERMINAL OPERATOR acknowledges that COUNTY is, or may be, subject to Development Orders issued pursuant to Chapter 380, Florida Statutes collectively,

("Development Orders"). COUNTY will be seeking regulatory approvals (collectively "Regulatory Approvals") consistent with its 1994 Fort Lauderdale-Hollywood International Airport Master Plan ("Master Plan") and FAR Part 150 Update ("Part 150 Update"), and the implementation of such plans, which may include the following: (1) amendment of existing Development Orders, (2) Preliminary Development Agreements from the Department of Community Affairs, (3) land use and zoning amendments, (4) preparation of Environmental Impact Statements, (5) such environmental permitting as may be required by federal, state, county or local regulations, and (6) any other Regulatory Approvals as may be required by any governmental authority having jurisdiction over the issuance of permits for the approval and implementation of the Master Plan and the Part 150 Update.

TERMINAL OPERATOR agrees to cooperate with COUNTY in connection with COUNTY's efforts to obtain the Regulatory Approvals. From and after the date of COUNTY's execution of this Agreement, TERMINAL OPERATOR covenants and agrees (i) to support the COUNTY's efforts to obtain the Regulatory Approvals; and (ii) to execute any document(s) or instrument(s) reasonably requested by COUNTY in order to assist COUNTY in obtaining the Regulatory Approvals, provided that TERMINAL OPERATOR shall not be required to bear any expense in connection therewith and TERMINAL OPERATOR shall not be deemed an agent of the COUNTY.

B. COUNTY agrees to cooperate with TERMINAL OPERATOR as may be reasonably required in order to assist TERMINAL OPERATOR with its design and construction activities as provided herein. COUNTY in providing such cooperation, shall not be required to bear any expenses.

35. PREFERENTIAL BERTHING AND CRANES

COUNTY shall, upon receipt of a berth application filed with the COUNTY's Port Everglades Department's Harbormaster section in accordance with the provisions of Port Everglades Tariff, provide access to and availability of Berth 30 to provide for a vessel up to 900 feet in length at Southport to TERMINAL OPERATOR on a preferential basis seven (7) days per week. COUNTY shall, upon receipt of an order for a container gantry crane(s) placed with the COUNTY's Port Everglades Department's Harbormaster section in accordance with the provisions of Port Everglades Tariff, provide TERMINAL OPERATOR with container gantry cranes SP6 and SP7 on a preferential basis seven (7) days per week. Should container gantry crane SP6 or SP7 not be available due to an out-of-service status, or Berth 30 not be available due to an out-of-service status, COUNTY will furnish TERMINAL OPERATOR with an alternate berth and crane(s) at Southport. TERMINAL OPERATOR shall not assert any claims or demands against COUNTY due to COUNTY's inability to furnish an alternate berth and crane(s).

The Parties hereto acknowledge and agree, that there will be no penalty to COUNTY for failure to furnish TERMINAL OPERATOR with an alternate crane(s) and berth. Within thirty (30) calendar days following the date the Port Everglades Southport Turning Notch Construction Project is substantially completed, the COUNTY's Port Everglades Department shall, in lieu of Berth 30, provide TERMINAL OPERATOR a preferential berth at Southport, Port Everglades needed to accommodate TERMINAL OPERATOR's 1100 foot container ship(s) calling at Port Everglades and two container gantry cranes.

36. TERMINAL OPERATOR'S EARLY TERMINATION RIGHTS

A. FOR CONVENIENCE

TERMINAL OPERATOR may elect to terminate this Agreement for its convenience upon the giving of not less than twenty-four (24) months prior written notice to COUNTY's Port Everglades Department's Chief Executive/Port Director of its intent to terminate for its convenience ("Termination Notice"). The effective termination date shall be the last day in the twenty-four (24) month period, which begins on the date such Termination Notice is received by COUNTY's Port Everglades Department's Chief Executive/Port Director. Upon the date COUNTY's Port Everglades Department's Chief Executive/Port Director receives TERMINAL OPERATOR's Termination Notice, TERMINAL OPERATOR shall immediately revert to and pay all Port Everglades' charges, i.e., dockage, wharfage, crane rental, etc., at the then current published Port Everglades Tariff rates. If the Termination Notice is received prior to the Final Premises Effective Date, Terminal Operator shall also pay rental charges at the then current square foot rental rate in place as of the Termination. Further, TERMINAL OPERATOR shall remain liable for its annual MGP payments payable monthly due over the twenty-four (24) month period, in accordance with the terms and conditions of this Agreement, which shall be credited towards TERMINAL OPERATOR's invoices for Port Everglades Tariff charges for dockage and container wharfage. In the event TERMINAL OPERATOR's Termination Notice is received by COUNTY's Port Everglades Department's Chief Executive/Port Director after the Final Premises Effective Date (where TERMINAL OPERATOR is paying COUNTY an "all in" bundled rate), TERMINAL OPERATOR shall immediately revert to and pay all Port Everglades' charges, i.e.,

dockage, wharfage, crane rental, etc., at applicable Tariff rates. Further, TERMINAL OPERATOR shall remain liable for its MGP payments due over the twenty-four (24) month period in accordance with the terms and conditions of this Agreement. A summary of the required payments to be made pursuant to this paragraph is set forth in Exhibit "H" attached hereto.

B. DELAY TO COUNTY'S SUBSTANTIAL COMPLETION DATE FOR THE SOUTHPORT TURNING NOTCH CONSTRUCTION PROJECT

TERMINAL OPERATOR may elect to terminate this Agreement in the event, COUNTY's intended substantial completion date, for the Southport Turning Notch Construction Project [to wit: December 31, 2019] is delayed six (6) months or more. COUNTY's Port Everglades Department shall provide TERMINAL OPERATOR with written notice of a six (6) months or more delay to the aforesaid substantial completion date within thirty (30) calendar days following COUNTY's Port Everglades Department's finalization of the exact nature and duration of the delay ("Delay Notice"). The Delay Notice shall include the new intended substantial completion date. TERMINAL OPERATOR shall have sixty (60) calendar days from the date the Delay Notice was sent by COUNTY's Port Everglades Department to elect to terminate this Agreement or accept the new intended substantial completion date.

In the event TERMINAL OPERATOR elects to terminate this Agreement pursuant to this subsection, it shall provide COUNTY's Port Everglades Department with written notice of its election to terminate. The effective termination date of this Agreement shall be not later than twelve (12) months from the date of TERMINAL OPERATOR's written

termination notice ("Wind Down Period"). TERMINAL OPERATOR shall accordingly, wind down its business operations and affairs at Port Everglades over said Wind Down Period and quit and surrender its then current leasehold interest at Southport, Port Everglades to COUNTY by the effective termination date. TERMINAL OPERATOR shall continue to pay COUNTY the then existing monthly rental payment amount up through the effective termination date, however, the annual Minimum Guaranteed Payment (MGP) amount for the Wind Down Period shall be reduced to ninety percent (90%) of the then existing annual MGP amount prorated monthly as applicable.

Further, in the event of such termination by TERMINAL OPERATOR, COUNTY will compensate TERMINAL OPERATOR for any of the permanent improvements it had made to the Interim Premises in an amount based upon an appraisal methodology and fair market value calculation that at a minimum: i) provides COUNTY with a credit, which equals the amount of the total rent credit previously provided to TERMINAL OPERATOR by COUNTY hereunder, ii) does not value the improvements at more than their depreciated value and, iii) does not utilize an appraisal method that includes or attributes any economic value to the improvements. If the Parties hereto cannot agree upon an appraisal method, the procedure set forth hereinbelow shall be followed and the panel of three (3) appraisers shall follow the guidelines hereinabove set forth.

The Parties hereto, acting reasonably, shall attempt to agree on the methodology to be used in such appraisal within ninety (90) calendar days after COUNTY's Port Everglades Department's receipt of TERMINAL OPERATOR's termination notice. If the Parties agree on the appraisal methodology, the Parties hereto shall each select an

appraiser to serve on a panel as hereinafter provided, to determine only the fair market value. If the Parties hereto do not agree on the appraisal methodology, they shall each select an appraiser to serve on a panel as hereinafter provided, to determine both the appraisal methodology and the fair market value. Each Party hereto shall give notice to the other of the identity of the appraiser it wishes to designate, and such individual shall be a MAI appraiser, with at least ten (10) years' experience in determining valuation of commercial properties in Broward County or the surrounding area. The two (2) appraisers thus selected, shall, within fifteen (15) calendar days, designate a third, neutral and similarly qualified individual to serve as the neutral chairperson of a panel of three (3) appraisers. If the two (2) appraisers cannot agree upon a neutral, third appraiser, then the Parties hereto shall submit the matter to the South Florida Chapter of the Appraisal Institute for selection of the neutral third appraiser. If the Parties hereto agree on the appraisal methodology, the panel of three (3) appraisers shall then determine only the fair market value. If the Parties hereto do not agree on the appraisal methodology, the panel of three (3) appraisers shall then determine both the appraisal methodology and the fair market value for the improvements. The panel of three (3) appraisers shall be permitted to request such further information from the Parties hereto as they may require to make their determination, and shall be permitted to conduct such further investigation, including requesting records of either Party hereto, as they may require to render its decision. The panel of three (3) appraisers shall issue its decision within forty-five (45) calendar days after the conclusion of its deliberations and shall provide a written explanation of its conclusions to COUNTY's Port Everglades Department and TERMINAL OPERATOR. The

agreement to submit this valuation process to a panel of three (3) appraisers is specifically enforceable by both Parties hereto in any court having jurisdiction over the improvements. No individual who is, or has at any time been, an officer, employee, or consultant of either Party hereto may serve as a member of the panel without the express written consent of both Parties. The decision of the panel of three (3) appraisers will be final and binding upon the Parties hereto and may be entered in any court having jurisdiction over the improvements.

Notwithstanding the foregoing, in the event circumstances surrounding the six (6) months or more delay should materially change (within sixty (60) calendar days from the date the Delay Notice was sent by COUNTY's Port Everglades Department to TERMINAL OPERATOR), leading to a conclusion by COUNTY's Port Everglades Department that the expected delay to the aforesaid substantial completion date will not exceed six (6) months or more, then COUNTY's Port Everglades Department shall immediately notify TERMINAL OPERATOR in writing of any shortened delay schedule. In such event, TERMINAL OPERATOR shall have the right to rescind any termination notice previously sent under this subsection to COUNTY's Port Everglades Department thereby accepting the new intended substantial completion date.

37. MISCELLANEOUS

A. TIME OF ESSENCE

It is understood and agreed between the Parties hereto that time is of the essence of this Agreement and shall apply to all terms and conditions contained herein.

B. INDEPENDENT CONTRACTOR/RELATIONSHIP OF PARTIES

TERMINAL OPERATOR is an independent contractor under this Agreement. Services provided by TERMINAL OPERATOR pursuant to this Agreement shall be subject to the supervision of TERMINAL OPERATOR. In providing such services, neither TERMINAL OPERATOR nor its agents shall act as officers, employees, or agents of the COUNTY. This Agreement shall not constitute or make the Parties a partnership or joint venture.

C. TERMINAL OPERATOR'S WAIVER OF CLAIMS

TERMINAL OPERATOR hereby waives any claim against COUNTY, and its officers, or employees for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable, or delaying the same or any part thereof, from being carried out.

D. AMENDMENTS

Except as otherwise provided herein, no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same formality and of equal dignity as this Agreement and executed by COUNTY or COUNTY's Port Everglades Department's Chief Executive/Port Director as allowable hereunder and TERMINAL OPERATOR.

E. MATERIALITY AND WAIVER OF BREACH

COUNTY and TERMINAL OPERATOR agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement

and, therefore, is a material term hereof. COUNTY's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

F. EXECUTION AUTHORITY

The individuals executing this Agreement on behalf of TERMINAL OPERATOR personally warrant that they have full authority to execute this Agreement on behalf of TERMINAL OPERATOR for whom they are acting herein.

G. CAPTIONS, HEADINGS, AND TERMS

The section and paragraph headings in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope or intent of any provision hereof. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section of this Agreement, such reference is to the section as a whole, including all of the subsections and subparagraphs of such section, unless the reference is made to a particular subsection or subparagraph of such section. Captions and section headings used in this Agreement are for the convenience of reference of the Parties hereto and shall not be deemed to define, limit, or in any way affect the meaning of any provisions of this Agreement.

H. GENDER

All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires.

I. INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the Parties. All attached exhibits are hereby incorporated into and made a part of this Agreement.

J. SEVERABILITY

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless COUNTY or TERMINAL OPERATOR elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

K. PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision or any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 37 of this Agreement shall prevail and be given effect.

L. SUCCESSORS AND ASSIGNS BOUND

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto where permitted by this Agreement.

M. AGENT FOR SERVICE OF PROCESS

It is expressly understood and agreed that if TERMINAL OPERATOR is not a resident of the state of Florida, or is a foreign corporation, then in any such event TERMINAL OPERATOR will designate a local agent in Broward County, Florida acceptable to COUNTY, as its agent for the purpose of service of process in any legal action with COUNTY. Service of process shall be made by COUNTY as provided by the laws of the state of Florida for service upon a nonresident, who has designated a local agent as its agent for service of process. It is further expressly agreed, covenanted, and stipulated that, if for any reason, service of such process is not possible, and as an alternative method of service of process, TERMINAL OPERATOR may be personally served with such process out of this state by certified mailing to TERMINAL OPERATOR at the address set forth herein. Any such service out of this state shall constitute valid service upon TERMINAL OPERATOR as of the date of mailing. It is further expressly agreed that TERMINAL OPERATOR is amenable to and hereby agrees to the process so served, submits to the jurisdiction of the state of Florida, and waives any and all objections and protests thereto.

N. CUMULATIVE RIGHTS

All rights and remedies of COUNTY and TERMINAL OPERATOR hereunder or at law or in equity are cumulative and shall be in addition to any other rights and remedies available. The exercise of any right or remedy shall not be taken to exclude or waive the right to the exercise of any other. Failure by COUNTY or TERMINAL OPERATOR to

promptly exercise any of their respective rights shall not operate to forfeit or be treated as a waiver of any such rights.

O. SPECIFIC PERFORMANCE

TERMINAL OPERATOR agrees that in addition to all other remedies, its obligations contained herein shall be subject to the remedy of specific performance by appropriate action commenced in a court of proper jurisdiction.

P. JOINT PREPARATION

The Parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.

Q. APPLICABLE LAW AND VENUE; WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the state courts of the Seventeenth Judicial Circuit of Broward County, Florida, the venue situs, and shall be governed by the laws of the state of Florida. **TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION THAT MAY ARISE HEREUNDER, EACH PARTY**

HEREBY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY SUCH LITIGATION.

R. UNCONTROLLABLE FORCES

Neither COUNTY nor TERMINAL OPERATOR shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the nonperforming Party could not avoid. The term "Uncontrollable Forces" shall mean any event, which results in the prevention or delay of performance by a Party of its obligations under this Agreement and, which is beyond the reasonable control of the nonperforming Party. It includes, but is not limited to, fire, earthquakes, hurricanes, tornadoes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions. Any delay caused by an Uncontrollable Force shall not be recognized unless the nonperforming Party notifies the other Party in writing within ten (10) calendar days after the Uncontrollable Force event occurs. Neither economic impracticability nor inability of TERMINAL OPERATOR to perform in whole or in part for economic reasons shall constitute an Uncontrollable Forces event.

S. NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AMERICANS WITH DISABILITIES ACT, AND COUNTY BUSINESS ENTERPRISES

1) TERMINAL OPERATOR shall not unlawfully discriminate against any person in its operations, activities or expenditure of funds in fulfilling its obligations under this Agreement. TERMINAL OPERATOR shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA, including Titles I and II of the ADA

regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, TERMINAL OPERATOR shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

2) TERMINAL OPERATOR shall not engage in or commit any discriminatory practice in violation of the Broward County Human Rights Act (Broward County Code, Chapter 16½) in performing any services pursuant to this Agreement.

3) TERMINAL OPERATOR shall take affirmative steps to ensure nondiscrimination in employment against disabled person. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

4) By execution of this Agreement, TERMINAL OPERATOR represents that it has not been placed on the discriminatory vendor list (as provided in Section 287.134, Florida Statutes). COUNTY hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle COUNTY to terminate this Agreement in accordance with the Default; Termination provision herein.

5) TERMINAL OPERATOR voluntarily agrees to take affirmative steps to ensure that Broward County Business Enterprises (as defined in Broward County Business Opportunity Act of 2012) have a fair opportunity to be awarded vendor and supplier contracts through TERMINAL OPERATOR's purchasing activities in Broward County, Florida.

T. PUBLIC ENTITY CRIMES

TERMINAL OPERATOR represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to Broward County, may not submit a bid on a contract with Broward County for the construction or repair of a public building or public work, may not submit bids on Agreements of real property to Broward County, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with Broward County, and may not transact any business with Broward County in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from Broward County's competitive procurement activities.

U. PRIOR AGREEMENTS

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the Parties hereto agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the Parties hereto agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. Further, the Parties hereto expressly acknowledge and agree, that the Marine Terminal Lease and Operating Agreement dated June 14, 2005 (as amended), between Broward County and Florida International Terminal, LLC, is hereby terminated as of the Commencement Date of this Agreement.

V. THIRD-PARTY BENEFICIARIES

Neither COUNTY nor TERMINAL OPERATOR intends to directly or substantially benefit a third-party by this Agreement. Therefore, the Parties hereto agree that there are no third-party beneficiaries to this Agreement and that no third-party shall be entitled to assert a claim against either of them based upon this Agreement. The Parties hereto expressly acknowledge that it is not their intent to create any rights or obligations in any third-party or entity under this Agreement.

W. RADON

Pursuant to Florida Statutes, COUNTY hereby advises TERMINAL OPERATOR of the following: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed

to it over time. Levels of Radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding Radon and Radon testing may be obtained from your County Public Health Unit.

X. MULTIPLE ORIGINALS

This Agreement may be fully executed in four (4) copies by Parties hereto, each of which, bearing original signatures, shall have the force and effect of an original document.

Y. ASSIGNMENT OF GRID #20

COUNTY's Port Everglades Department shall, at no cost to TERMINAL OPERATOR, provide TERMINAL OPERATOR with COUNTY's Port Everglades Department's Grid #20 as more particularly described on Exhibit "I" attached hereto and made a part hereof. Grid #20 will be used by TERMINAL OPERATOR to construct its container terminal gate complex. Grid #20 shall be delivered to TERMINAL OPERATOR fully fenced and with a curb cut access point to McIntosh Road. Prior to delivery of Grid #20, COUNTY shall provide TERMINAL OPERATOR with an as-built survey of Grid #20. The gate complex shall be substantially completed by TERMINAL OPERATOR on or before January 1, 2017. The Grid assignment shall be made within thirty (30) calendar days of the date TERMINAL OPERATOR receives all its required permits and government approvals for the construction of its container terminal gate complex. TERMINAL OPERATOR shall provide COUNTY's Port Everglades Department with written notice of the date it obtained all the required permits and governmental approvals for the construction of its container terminal gate complex. Grid #20, shall be merged into and

become a part of the Interim Premises leased to TERMINAL OPERATOR hereunder as of the Interim Premises Effective Date.

Z. RETURN OF CURRENT PREMISES


Notwithstanding anything herein to the contrary, the Parties agree that TERMINAL OPERATOR shall have no obligation to repair or restore the Current Premises or to remove any fixtures at the end of the term of its use of the Current Premises, it being understood that COUNTY intends to excavate the Current Premises for construction of the Southport Turning Notch extension.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

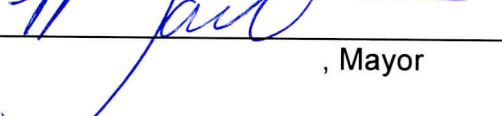
IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor authorized to execute same by Board action on the 8th day of December, 2015, and FLORIDA INTERNATIONAL TERMINAL, LLC, signing by and through its PRESIDENT, duly authorized to execute same.

COUNTY:

ATTEST:


Broward County Administrator, as
Ex-Officio Clerk of the Broward County
Board of County Commissioners

BROWARD COUNTY, by and through
its Board of County Commissioners

By: 
_____, Mayor
8th day of December, 2015

Insurance requirements
approved by Broward County
Risk Management Division

By: 
Signature (Date)
CARLOS DE LA GUERRA
RISK MANAGEMENT & CONTRACTS
BUSINESS ADMINISTRATION DIVISION
PORT EVERGLADES

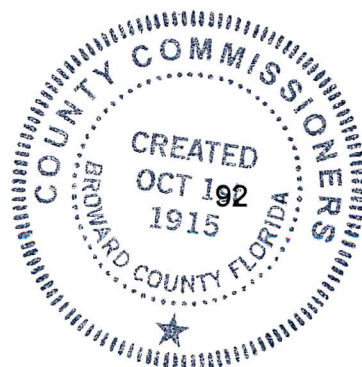
Approved as to form by
Joni Armstrong Coffey
Broward County Attorney
Port Everglades Department
1850 Eller Drive, Suite 502
Fort Lauderdale, Florida 33316
Telephone: (954) 523-3404
Telecopier: (954) 468-3690

Print Name and Title above

By: 

Russell J. Morrison
Sr. Assistant County Attorney

RJM/dh
FIT_Final
#15-300.05



20 12 30

**MARINE TERMINAL LEASE AND OPERATING AGREEMENT BETWEEN
BROWARD COUNTY AND FLORIDA INTERNATIONAL TERMINAL, LLC**

ATTEST:


Corporate Secretary

JOSE A. DIAZ
(Print Name of Pres./Vice Pres.)

WITNESS:


(Signature)


(Signature)

TERMINAL OPERATOR:

FLORIDA INTERNATIONAL TERMINAL,
LLC, a Florida limited liability company,

By: 

JAVIER BOTAR
(Print Name of ~~Secretary~~ **PRESIDENT**)

PRESIDENT
(Print Title)

30 day of OCTOBER, 2015

EXHIBIT "D"
ENVIRONMENTAL AUDIT

I. **LIMITATION OF LIABILITY OF TERMINAL OPERATOR**

TERMINAL OPERATOR shall have no liability for any pre-existing environmental impairments, liabilities or conditions not caused by TERMINAL OPERATOR, its agents, employee, invitees, contractors, sub-contractors, and sub-lessees. TERMINAL OPERATOR shall not be liable for any migration and/or rise in the level of Pollutants as a result of any migration on or under the subject property leased hereunder, which Pollutants are not attributable to its operations on the subject property. TERMINAL OPERATOR shall only be liable for the release of Pollutants (as such term is defined in the Agreement), during the Agreement's term, which is caused by or otherwise attributable to TERMINAL OPERATOR and/or its agents, employees, contractors, sub-contractors, sub-lessees and invitees.

II. **DESCRIPTION OF PRE-EXISTING ENVIRONMENTAL CONDITIONS**

In 1992, the then, Port Everglades Authority properly closed a forty acre landfill as per the direction of the then Broward County Office of Natural Resource Protection (BCONRP). At the time of closure, and as referenced in letters dated October 5, 1992, and October 22, 1992, from the County's Office of Natural Resource Protection, the Department concluded that due to the fact that the site was over salt water and over a mile away from the nearest public supply well, that any contamination on the property had a low probability of migrating to a location that would pose a public health and safety risk. The following chemicals had been identified at that time to have exceeded County groundwater standards. These chemicals are: manganese, BOD, ammonia and

phosphorus. In addition, low levels of lead attributed to the former gun range was identified as well as a detectable amount of chlorobenzene.

A limited Phase II audit was conducted by URS, a consultant for a proposed tenant, in November, 2004. One of the groundwater samples again revealed the presence of lead and it is thought to be a result of the former use as a gun range. In addition, another ground water sample indicated that presence of arsenic which possibly could be a result of the former usage as a metal recycling facility.

These are the historical and present day results of the ground water sampling for this 40 acre site. As such, it appears that little has changed with the regard to materials historically presence and those found today. The land use of the area will continue to be for the movement and storage of cargo and as mentioned in the County's closure report, there would be some concern by the agency if the land use changed to schools, parks, churches or residential use, however, this area will be maintained as it is today.

20 12 30

EXHIBIT "E"
COMPLETED ENVIRONMENTAL AUDIT

EXHIBIT "F"
VSA and SCA filings with the Federal Maritime Commission

As of 10-14-2015

Americas Service – Hamburg Sud, Hapag Lloyd

Tango Service – Hamburg Sud, Hapag Lloyd, NYK, Yang Ming

Venex Service – Hamburg Sud, King Ocean

GAX Service – Hapag Lloyd (CSAV)

201230

EXHIBIT "G"

PORT EVERGLADES, DEPARTMENT of BROWARD COUNTY

1850 Eller Drive, Ft. Lauderdale FL33316 Voice:954.523.3404 Fax:954.524.0170

FIT CARGO MANIFEST REPORT

LINE:

VESSEL NAME:

ARV Date:

DEP Date:

Vessel Sharing Agreement:

YES

☐

NO

☐

(If yes, indicate lines):

Note: A separate report must be submitted for each shipping line sharing the vessel.

CONTAINERS	CONTAINER CARGO WHARFAGE	
	Discharged/Inbound	Loaded/Outbound
20' Containers - Empty		
20' Containers - Full		
20' Containers - Transshipment Full		
40' Containers - Empty		
40' Containers - Full		
40' Containers - Transshipment Full		
45' Containers - Empty		
45' Containers - Full		
48' Containers - Empty		
48' Containers - Full		
53' Containers - Empty		
53' Containers - Full		
Chassis - Empty		
TOTAL CONTAINERS		
TOTAL CONTAINERIZED CARGO KILO/LBS		
TOTAL RORO CONTAINERIZED CARGO KILOS/LBS		
TOTAL TRANSSHIPMENT CONT CARGO KILO/LBS		

BREAK BULK/BULK	NON-CONTAINERIZED CARGO			
	Total Quantity	Tot Wt	Total Quantity	Tot Wt
AGGREGATE				
ALUMINUM SILICATE				
AUTOMOBILES				
AUTOMOBILES-RORO - PCC				
GENERAL CARGO				
BUSES				
CEMENT (BULK)-BC03				
CEMENT CLINKERS				
CEMENT-PALLETIZED-BC10				
COAL				
COFFEE				
GYPSUM				
HARD/PARTICLE BOARD				
LUMBER (MBFT)				
NEWSPRINT/LINER BOARD				
PLYWOOD				
ROCK OR SAND				
SCRAP METAL				
SCRAP/WASTE PAPER				
STEEL				
STEEL COILS				
STEEL REBAR (BUNDLES)				
SUGAR (BULK)				
TALLOW				
TRACTORS				
TRAILERS				
TRUCKS				
YACHTS/BOATS				
YACHTS/BOATS FLOATING				
TOTAL BREAK BULK WEIGHT				
TOTAL BILL OF LADINGS				
TOTAL EMPTIES/CHASSIS				
TOTAL MANIFEST WEIGHT				

Prepared By:

Contact No:

Email address:

Date:

Above Certified in Accordance with Ship's Manifest (Signature of Agent)

EXHIBIT "H"**Example of Payments Due on Termination for Convenience****Prior to Final Premises Effective Date**

1. MGP in effect on date of notice.
2. Charges for cargo, i.e., dockage, wharfage, crane rental, at tariff, after credit for MGP payments.
3. Rent in effect on date of notice.

After Final Premises Effective Date

1. MGP in effect on date of notice.
2. Charges for cargo, i.e., dockage, wharfage, crane rental, at tariff, after credit for MGP payments, but excluding, the land rental component of the all in bundled rate used to calculate the MGP.

